except that it may be filed against a member of the Legislature at any time after five days from the beginning of the first session after his election. After one Recall Petition and election, no further Recall Petition shall be filed against the same officer during the term for which he was elected, unless petitioners signing such petition shall first pay into the public treasury which has paid such election expenses, all expenses of the preceding election.

Sec. 6. The general election laws shall apply to recall elections in so far as applicable. Laws necessary to facilitate the operation of the provisions of this article shall be enacted, including provision for payment by the public treasury of the reasonable special election campaign expenses of such officer.

READINGS ON
PARTIES AND ELECTIONS
IN THE UNITED STATES

BY

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To

CAROLINE LLOYD JONES

PREFACE

As our civilization grows more complex and our population greater, the organization and working of party government becomes something in which the citizen feels an increasing interest. Whether we welcome the change or not, the state plays a growing part in our everyday lives; our food is standardized, the charge for moving of goods or persons from place to place is regulated, many businesses formerly considered private are subjected to control because of the peculiar relation in which they stand to the public. The house of the citizen is no longer his castle within which the state may not prescribe the manner of life, and a large part of our population is no longer "free" to work where it will and for as long as it may please.

When such a change in the sphere of the state is coming over our national life, it becomes important, as never before, that the people who are subject to regulation should exercise control over those who set the laws. Party is the means by which public policy is determined. To have efficient control we must have parties responsive to the popular will, parties whose actions turn on public policy, not on the will of agents whom the public cannot control. Government of the people is government by party in all modern states. Clean government and normal party action are possible in a democracy only when those who are governed understand how they are governed.

It is to make easy of access some of the best discussions illustrative of the development, present organization, abuses and remedies for the defects of our party government that this book is published. It is not a source book; indeed, the chief reliance has been upon secondary and contemporaneous writing, but it is believed that the material will, for this reason, have

added interest because it deals with the living, growing forces of the present time.

I am indebted for assistance in securing the material for this book to Dr. Charles McCarthy of the Wisconsin Legislative Reference Library, who has placed the invaluable collection of material made under his direction at my disposal. My thanks are due to the authors and publishers of the selections for their permission to reproduce them. Mr. Leo Tiefenthaler, sometime assistant in political science in the University of Wisconsin, has been a willing collaborator who has aided much by criticism and suggestion.

CHESTER LLOYD JONES.

MADISON, WISCONSIN,
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READINGS ON PARTIES AND ELECTIONS

I. Party Control of the Government

1. PARTY GOVERNMENT IN ENGLAND AND THE UNITED STATES CONTRASTED[1]

The basis of the democratic thought of the nineteenth century is the expression of the popular will in government. The means adopted to accomplish the result is the political party. In England it expresses the popular will from within the government; in the United States it imposes its control from without.

Popular government has unquestionably been the political ideal of the nineteenth century. Its realization has been the end of most of the changes which have been made during the century in the political institutions of nations enjoying western European civilization. This is seen in the steadily increasing participation of the people in the work of government, accorded by the constitutions which have been adopted, the laws which have been passed, and the extra-governmental and extra-constitutional devices to which resort has been had. In all the western European countries, including within them the United States, which possess written constitutions, the newer constitutions, and in England, which has no such instrument, the statutes of Parliament, have widened the suffrage.

The frame of government itself has been so changed, either by constitutional provision or by extra-constitutional device, as to give the people themselves or the people's representatives greater control over the actual conduct of government. In England the establishment of cabinet government has made

[1] Goodnow, F. J., *Politics and Administration*. Macmillan, New York, 1900; pp. 148–167.

the House of Commons, the representative of the people, the controlling governmental authority. In the United States the nomination of the President by the party conventions has brought the choice of the President one degree nearer the people than was originally contemplated by the Constitution.

And yet, notwithstanding that popular government has thus been the ideal of the nineteenth century, few of the persons who hold this ideal have a clear idea of what popular government in its concrete manifestations really is. It is unquestionably true that most persons regard popular government as a system of government in which decisions as to political conduct are the result of the conscious deliberations of the people. It is, however, just as unquestionably true that the forms of government which we are accustomed to regard as popular, and which are to be found in conditions of life at all complex, do not generally provide for any such conscious deliberation on the part of the people.

Where conditions of life are at all complex, *i.e.* where the population is numerous and not thoroughly homogeneous, where the territory to be governed is extended and the distribution of wealth and intelligence is not comparatively equal, the necessities of the case have developed alongside of the formal governmental system more or less voluntary extra-governmental organizations, which exercise a controlling influence on the formal governmental system. As Mr. Lowell points out, "A superficial glance at the history of democracy ought to be enough to convince us that in a great nation the people as a whole do not and cannot really govern. The fact is that we are ruled by parties whose action is more or less modified, but never completely directed, by public opinion . . . always more or less warped by the existence of party ties." Parties, although formed to secure certain ends, get to be ends in and of themselves. Party allegiance gets to replace, as a primary motive of conduct, adherence to political principle. The perpetuation of the party often appears more important

than the ends for whose attainment the party itself originally was formed.

Party leaders, on account of this important position assumed by the parties, often assume more importance as controlling factors in the political system than governmental officers. The aims of these party leaders must in large degree be the same as the aims of the party which they lead. They must strive in first instance for the perpetuation of the party. For the party is the instrument through which the ends for which the party was formed can be attained. The maintaining in its integrity and power of the party organization and the preservation of successful party leadership are so necessary to the attainment of the ultimate ends of the party that the rôle of the members of the party ceases to be the positive determination of the party policy, and is reduced to the amendment or negativing of propositions made by the party leaders. A body in which all shades of opinion exist and find expression is apt to be a debating society merely, incapable of positive action. But parties are formed for action rather than debate. They must accomplish something positive in the world of action. They must therefore follow rather than lead, and in order that they may follow they must have leaders capable of originating a policy which will approve itself to the party membership.

Now, in order that government under parties shall be popular, conditions must be such, both that the party, in whom the people as a whole do not have confidence, shall retire from the active control of the government, and that party leaders who in like manner have forfeited the confidence of the party shall retire from active control of the party. If these conditions do not exist, the system of government cannot be said to be popular. If they do exist, the government is probably as nearly popular as government ever has been or ever can be expected to be in any except the most primitive and simple social conditions. Certainly in the governments of states, possessing a highly developed civilization, with which we are

acquainted, the people as a whole have had no greater influence on the conduct of public affairs. England, whose government may, perhaps, with the exceptions of the United States and Switzerland, be regarded as the most popular in existence, is a good example of this fact.

When, after the struggles of the seventeenth century, Parliament came to be regarded as the supreme authority in the English government, no attempt was made by that body to carry on the government in the sense that it was to formulate a policy to be executed by the Crown. On the contrary, Parliament was content to play the subordinate rôle of approving or disapproving a policy formulated by the Crown. (Such is the present condition in Germany, where strong parties have not developed.) The attempt made by William III to obtain the approval of his policy by Parliament through choosing as his ministers persons who had its confidence, soon led, under sovereigns less strong and less able, to Parliament's dictating to the Crown whom it should appoint as its ministers. As Mr. Lowell remarks, "The system which had been devised in order that the king might control the House of Commons became, therefore, the means by which the House of Commons through its leaders controlled the king, and thus all the powers of the House of Commons and the Crown became vested in the same men, who guided legislation and took charge of administration at the same time."

This relegation of the Crown to the position of one who reigned but did not govern did not, however, result, as might at first be supposed, in the adoption of the principle that the popular body could formulate policies to be executed by its servants. For, as Mr. Lowell says, the ministers not only "took charge of the administration," but also "guided legislation." It might be added that they also, as a result of their party leadership, do much in the election campaigns to determine the membership of the House of Commons whose legislation as ministers and members of that body they guide.

Of course the present position of the ministers as leaders at

the same time of legislation and administration was not at once worked out. But just so soon as this position was determined, and the localities in the kingdom, through the process of administrative centralization which has been going on through this century, had been subordinated to the central government, the ministers became heirs to all the old powers of the English Crown, the recognized sovereign of the English people, and as such sovereign, from the legal point of view exercising all powers of government.

At the present time the ministers unite in their hands powers of legislation and powers of administration with regard to both the central and local governments. They both formulate policies and execute them after their formulation; and so long as their action meets with the approval of Parliament whose representatives they are, there is none to gainsay them. If, however, they fail to gain such approval, in accordance with constitutional practice, they must resign their powers to others whose policy is approved by Parliament. Finally, in order to make Parliament representative of the people, who in greater and greater numbers have been given the suffrage, the ministers are permitted to appeal from the decisions of Parliament to the people; while Parliament itself, in case no such appeal was taken, is accustomed to dissolve of its own accord at least once in seven years.[1]

In this way the entire English government is made responsible to Parliament, which in its turn is responsible to the people. Such a system of government requires for its successful working the existence of reasonably strong and coherent parties, whose leaders are the ministers of the government when their party is in power. It does not, however, make nearly the demands on the party that are made by the American system of government. The necessary coördination of the expression and execution of the will of the state is obtained in, not outside of, the govern-

[1] The duration of a Parliament was reduced in 1911 to five years instead of seven (Ed.).

mental system. Further, while no attempt is made in such a system to adopt the democratic ideal, as it has been described, that is to assure to the people or their representatives the formulation of policies whose execution is intrusted to ministerial subordinates, the system does secure to the representatives of the people and to the people as a whole the power to say nay to a policy of which they do not approve, and does insure that in case of the expression of such disapproval the persons in charge of the government shall give way to others more in accord with the popular mind. . .

The condition of things in this country is from the formal and theoretical point of view much the same as in England. Indeed, if anything, the formal American system of government would seem to assure greater popular responsibility than the English. The formal American executive is not hereditary as is the English Crown. Both houses of the American legislature have their origin in a direct or indirect popular vote, while membership in the English House of Lords is inherited.

The actual political conditions in America do not, however, permit of as great popular responsibility upon the part of the government as is secured by the actual political conditions in England. When the governments of the states of the United States were formed they evidenced the influence of the democratic ideal to which cohesion has been made. That is, they were organized in such a way that questions of policy were to be determined by popular representative bodies — the legislatures — which were elected by a comparatively large number of people. These bodies not merely had the power to veto proposals made to them by the executive, but also themselves initiated policies, all the details of which they themselves determined. These policies were to be put into execution by other organs of government regarded as servants of the legislature, but on account of their independent position not really subject to an effective legislative control.

Now while the ideal of democracy was realized in the formal

governmental systems thus established in the states, it was an ideal which was not realized in actual political practice. This ideal was not realized, although the form of government based upon it continued in existence. That it was not realized was due to the character of the political party organization through which the government came to be carried on.

The earliest records we have of the organization and action of the political parties which were in existence at the time of the establishment of our state governments show that, notwithstanding the democratic forms of government, the actual determination of the popular will was very largely controlled by a few people, who, by shrewd manipulation, and in some cases by questionable practices, succeeded in forcing or persuading the voters to follow their lead. . .

This party system did not, however, fulfill the ideals of democracy, and the attempt was made almost everywhere in this country to democratize the party machinery, so that it might in its outward manifestations conform to the ideals of democracy as expressed in the form of government which had been adopted. The party organization was, therefore, almost everywhere remodelled. The party voters everywhere insisted that meetings should be held at which all of the members of the party might be present and act in the nomination of candidates, or in the election of delegates to act for them in conventions established for districts which were too large to permit of the direct action of the party members in the nomination of candidates.

Senator Dallinger says, "By the beginning of the Revolution, the caucus or primary had become pretty well established in New England and the Middle States. With the close of the war it gradually lost its secret character which had been rendered necessary by the exigencies of the time, and became a miniature town meeting of the party voters of the ward or district. In New England, except in some of the large cities, and in those sections of the country settled by New England people, the caucus still retains its original town meeting character. But in the other

states with the growth of population the 'primary' has come to be a mere polling-place for the election of delegates to the various conventions and of members of the local party committee, there being no opportunity whatever for any discussion of the merits of the various candidates. The inevitable result has been that the real work of nomination has largely fallen either into the hands of 'parlor caucuses' ("The reader is not to infer that there are no parlor caucuses in New England; but where the caucus is a small body and opportunity is afforded for popular discussion of the merits of candidates, there is always a chance of breaking a 'slate' of a previous parlor caucus which does not exist where the primary is only a polling-place.") or of political committees and clubs — the power of the individual voter being restricted to the choice between candidates agreed upon at such preliminary secret conferences or named by such organizations."

The result of the development of party organization in the United States has been that, notwithstanding the democratic form of the government and the likewise formally democratic character of the party organization, the political functions of the ordinary individual are confined to saying "Yes" or "No" to propositions made to him relative to the nomination or election of persons proposed for political or party office by those in control of the party organization. The only instances where the voters of the party have positive initiation in the determination of who shall be the party candidates are, according to Senator Dallinger, in the rural districts of New England. Here the primary or caucus is described as " a miniature town meeting of the party voters," where "opportunity is afforded for public discussion of the merits of candidates," and "there is always a chance of breaking a 'slate' made at a previous parlor caucus." The reason why these exceptional conditions are found in the rural districts of New England is not far to seek. There we find both the conditions most favorable to the development of democracy, and a local-government system which almost from the

beginning of the history of the country has accustomed the people as a whole to participate in politics. But even here it is to be noticed that the parlor caucus is not unknown, and the actual form of political action may consist rather in breaking than in making a slate.

Actual political conditions in the United States thus resemble actual political conditions in England in that the people have little positive power in formulating and putting into execution their ideas relative to political conduct.

Does the American system, however, resemble the English system in allowing the people both to retire from power a party in which they do not have confidence, and to retire from party leadership a party leader when they have ceased to approve of his policy?

If we consider this question merely from the point of view of the governmental system, we must at once admit that the American system is not of such a character as to admit of as immediate responsiveness to the public will as is assured by the English system. Cabinet government, whatever may be its defects, does assure the possibility of at once finding out what is public opinion, so far as that is represented in Parliament, and of making that opinion effective. Presidential government, as our system has been called, makes this impossible on account of the independent position of the executive. Differences between the legislative and the executive cannot be settled until the time fixed by the Constitution for the general elections. The fact that the legislature and the executive are elected in different ways makes it possible for such differences to exist immediately after the election. The governmental system being fixed in a written constitution cannot be changed by custom. Constitutional amendment is, in our experience, a slow and almost impossible method of political growth.

The parties have had to develop extraordinary strength in order to be able to bring about harmony in the government. They had not merely to be very strong, they had also to be quite

permanent, for they had to strive to control all branches of the government for quite a long period of time if they were to hope to see realized in political conduct the principles for which they were formed. Notwithstanding this strength and permanence, parties are only partially successful in doing the work devolved upon them by the American governmental system. There are too many instances of governmental deadlocks in our political life to permit us to believe that the efforts of parties have been absolutely successful.

This great strength, this comparative permanence, which it is necessary that parties should have in order to do the work devolved upon them by the formal governmental system, have unquestionably caused the party organizations to be less responsive to the party will than is desirable. The individual members of the party have not only not been able to make the party leaders as responsive as might be wished, they have not desired to insist upon as full a measure of responsibility from party leaders as is desirable from their fear of weakening the party. This unwillingness on their part is in large measure due to their appreciation of the enormous task which our governmental system devolves upon the party, and to the feeling that the accomplishment of this task makes necessary that they evince willingness to forego a part of their political privileges, if through such action the party to which they have attached themselves can be successful in obtaining control of the government. As in the case of national danger, the citizen is willing to pardon a degree of arbitrary action on the part of the government to which he would not submit in times of peace, so in face of the bitter political warfare which the American system of government would seem to promote, the party members will submit to action on the part of party leaders which in a more tranquil condition of things they would not hesitate to resent.

The American political system as at present existing does not thus satisfy the demands of popular government, as they

have been defined, in as full a measure as is desirable. It does not in the first place permit the easy retirement, from the control of public affairs, of a party which has lost the confidence of the people. It does not in the second place give the party members, in case they disapprove of policies proposed by party leaders, the power to bring about as easily as is desirable a change in party leadership.

If it be said that the electorate makes our governmental system popular, it may be answered that the power the people practically have at an election is merely to choose between several candidates, none of whom they may desire, and who, if elected, do not have the power always to secure the adoption of the popular policy. What the people should have, if the government is to be really popular in character, is the power at a given time to force an unpopular party out of the control of the government, and to oblige the party leaders in whom they do not have confidence to lay down their rights of leadership, giving place to others more in accord with the public will. Until such a condition of things is reached, either within the government or the party, no government can be regarded as popular.

That the English method of securing such a result, so far as may be, in the governmental organization, has great advantages, is not to be denied, although it may, of course, be doubted whether such a method would be applicable in this country. It may be that we shall have to get the same thing outside of our governmental system, and in our parties. The discontent with party management and the recent growth of the independent voting class would indicate that the people are gradually becoming aware that our real political system is not what an examination of our governmental system would at first lead an observer of it to think it is. The growing interest in methods of primary reform indicates, further, that the conviction is gaining ground that the point of attack by those who believe in the preservation of popular government is not so much the formal governmental system as the party organization.

2. THE CONDITIONS OF PARTY GOVERNMENT IN THE UNITED STATES [1]

The development of parties in England has made them directly responsible for all important acts of the government. In the United States the form of our Constitution has made that responsibility less direct.

The political party is a voluntary association which seeks to enlist a majority of voters under its banner and thereby gain control of the government. As the means employed by the majority to make its will effective, it is irreconcilably opposed to all restraints upon its authority. Party government in this sense is the outcome of the efforts of the masses to establish their complete and untrammeled control of the state.

This is the reason why conservative statesmen of the eighteenth century regarded the tendency towards party government as the greatest political evil of the time. Far-sighted men saw clearly that its purpose was revolutionary; that if accomplished, monarchy and aristocracy would be shorn of all power; that the checks upon the masses would be swept away and the popular element made supreme. This would lead inevitably to the overthrow of the entire system of special privilege which centuries of class rule had carefully built up and protected.

When our Constitution was framed responsible party government had not been established in England. In theory the Constitution of Great Britain recognized three coördinate powers, the King, the Lords, and the Commons. But as a matter of fact the government of England was predominantly aristocratic. The landed interests exerted a controlling influence even in the House of Commons. The rapidly growing importance of capital had not yet seriously impaired the constitutional authority of the landlord class. Land had been until recently the only important form of wealth; and the right to a voice in

[1] Smith, J. A., *The Spirit of the American Government.* Macmillan, New York, 1907.

the management of the government was still an incident of land ownership. Men as such were not entitled to representation. The property-owning classes made the laws and administered them, officered the army and navy, and controlled the policy of the government in every direction. . .

The framers of our Constitution, as shown in previous chapters, took the English government for their model and sought to establish the supremacy of the well-to-do classes. Like the English conservatives of that time they deplored the existence of political parties and consequently made no provision for them in the system which they established. Indeed, their chief purpose was to prevent the very thing which the responsible political party aimed to establish, viz., majority rule.

The very existence of political parties would endanger the system which they set up, since in their efforts to strengthen and perpetuate their rule they would inevitably advocate extensions of the suffrage, and thus in the end competition between parties for popular support would be destructive of all those property qualifications for voting and holding office which had up to that time excluded the propertyless classes from any participation in public affairs. Hence Washington though a staunch Federalist himself saw nothing inconsistent in trying to blend the extremes of political opinion by giving both Hamilton and Jefferson a place in his Cabinet.

In England the party by the Reform bill of 1832 accomplished its purpose, broke through the barriers erected against it, divested the Crown of all real authority, subordinated the House of Lords, and established the undisputed rule of the majority in the House of Commons. This accomplished, it was inevitable that the rivalry between political parties should result in extensions of the suffrage until the House should come to represent, as it does in practice to-day, the sentiment of the English people.

The framers of the American Constitution, however, succeeded in erecting barriers which democracy has found it more difficult to overcome. For more than a century the constitutional bul-

warks which they raised against the rule of the numerical majority have obstructed and retarded the progress of the democratic movement. The force of public sentiment soon compelled, it is true, the adoption of the Twelfth Amendment, which in effect recognized the existence of political parties and made provision for the party candidate for President and Vice-President. At most, however, it merely allowed the party to name the executive without giving it any effective control over him after he was elected, since in other respects the general plan of the Constitution remained unchanged.

The political party, it is true, has come to play an important rôle under our constitutional system; but its power and influence are of a negative rather than a positive character. It professes, of course, to stand for the principle of majority rule, but in practice it has become an additional and one of the most potent checks on the majority.

To understand the peculiar features of the American party system one must bear in mind the constitutional arrangements under which it has developed. The party is simply a voluntary political association through which the people seek to formulate the policy of the government, select the officials who are to carry it out in the actual administration of public affairs, and hold them to strict accountability for so doing. Under any government which makes full provision for the political party, as in the English system of to-day, the party has not only the power to elect but the power to remove those who are entrusted with the execution of its policies. Having this complete control of the government, it cannot escape responsibility for failure to carry out the promises by which it secured a majority at the polls. This is the essential difference between the English system on the one hand and the party under the American constitutional system on the other. The one well knows that if it carries the election it will be expected to make its promises good. The other makes certain promises with the knowledge that after the election is over it will probably have no power to carry them out.

It is this lack of power to shape the entire policy of the government which, more than anything else, has given form and character to the party system of the United States. To the extent that the Constitution has deprived the majority of the power to mold the policy of the government through voluntary political associations, it has defeated the main purpose for which the party should exist.

The fact that under the American form of government the party cannot be held accountable for failure to carry out its ante-election pledges has had the natural and inevitable result. When, as in England, the party which carries the election obtains complete and undisputed control of the government, the sense of responsibility is ever present in those who direct it. If in the event of its success it is certain to be called upon to carry out its promises, it cannot afford for the sake of obtaining votes to make promises which it has no intention of keeping. But when the party, even though successful at the polls, may lack the power to enforce its policy, it cannot be controlled by a sense of direct responsibility to the people. Promises may be recklessly and extravagantly made merely for the sake of getting votes. The party platform from the point of view of the party managers ceases to be a serious declaration of political principles. It comes to be regarded as a means of winning elections rather than a statement of what the party is obligated to accomplish.

The influence thus exerted by the Constitution upon our party system, though generally overlooked by students and critics of American politics, has had profound and far-reaching results. That the conduct of individuals is determined largely by the conditions under which they live is as well established as any axiom of political science. This must be borne in mind if we would fully understand the prevailing apathy — the seeming indifference to corruption and ring rule which has so long characterized a large class of intelligent and well-meaning American citizens. To ascribe the evils of our party system to their lack

of interest in public questions and their selfish disregard of civic duties, is to ignore an important phase of the problem — the influence of the system itself. In the long run an active general interest can be maintained only in those institutions from which the people derive some real or fancied benefit. This benefit in the case of the political party can come about only through the control which it enables those who compose it to exercise over the government. And where, as under the American system, control of the party does not ensure control of the government, the chief motive for an alert and unflagging interest in political questions is lacking. If the majority cannot make an effective use of the party system for the attainment of political ends, they cannot be expected to maintain an active interest in party affairs.

But although our constitutional arrangements are such as to deprive the people of effective control over the party, it has officers at its disposal and sufficient power to grant or revoke legislative favors to make control of its organization a matter of supreme importance to office seekers and various corporate interests. Thus while the system discourages an unselfish and public-spirited interest in party politics, it does appeal directly to those interests which wish to use the party for purely selfish ends. Hence the ascendency of the professional politician who, claiming to represent the masses, really owes his preferment to those who subsidize the party machine.

The misrepresentative character of the American political party seems to be generally recognized by those who have investigated the subject. It is only when we look for an explanation of this fact that there is much difference of opinion. The chief difficulty encountered by those who have given attention to this problem has been the point of view from which they have approached it.

The unwarranted assumption almost universally made that the principle of majority rule is fundamental in our scheme of government has been a serious obstacle to any adequate inves-

tigation of the question. Blind to the most patent defects of the Constitution, they have ignored entirely its influence upon the development and character of the political party. Taking it for granted that our general scheme of government was especially designed to facilitate the rule of the majority, they have found it difficult to account for the failure of the majority to control the party machine. Why is it that under a system which recognizes the right and makes it the duty of the majority to control the policy of the government, that control has in practice passed into the hands of a small minority who exercise it often in utter disregard of and even in direct opposition to the wishes and interests of the majority? On the assumption that we have a Constitution favorable in the highest degree to democracy, how are we to explain the absence of popular control over the party itself? Ignoring the obstacles which the Constitution has placed in the way of majority rule, American political writers have almost invariably sought to lay the blame for corruption and machine methods upon the people. They would have us believe that if such evils are more pronounced here than elsewhere it is because in this country the masses control the government.

If the assumption thus made concerning the nature of our political system were true, we would be forced to accept one of two conclusions: either that popular government inevitably results in the despotism of a corrupt and selfish oligarchy, or if such is not a necessary consequence, then at any rate the standard of citizenship in this country intellectually and morally is not high enough to make democracy practicable. That the ignorance, selfishness and incapacity of the people are the real source of the evils mentioned is diligently inculcated by all those who wish to discredit the theory of popular government. No one knows better than the machine politician and his allies in the great corporate industries of the country how little control the people generally do or can exercise over the party under our present political arrangements. To disclose this fact to the

people generally, however, might arouse a popular movement of such magnitude as to sweep away the constitutional checks which are the source of their power. But as this is the very thing which they wish to prevent, the democratic character of the Constitution must be taken for granted; for by so doing the people are made to assume the entire responsibility for the evils which result from the practical operation of the system. And since the alleged democratic character of our political arrangements is, it is maintained, the real source of the evils complained of, the only effective remedy would be the restriction of the power of the people. This might take the form of additional constitutional checks which would thereby diminish the influence of a general election upon the policy of the government without disturbing the present basis of the suffrage; or it might be accomplished by excluding from the suffrage those classes deemed to be least fit to exercise that right. Either method would still further diminish the influence of the majority, and instead of providing a remedy for the evils of our system, would only intensify them, since it would augment the power of the minority, which is, as we have seen, the main source from which they proceed.

A government which limits the power of the majority might promote the general interests of society more effectually than one controlled by the majority, if the checks were in the hands of a class of superior wisdom and virtue. But in practice such a government, instead of being better than those for whom it exists, is almost invariably worse. The complex and confusing system of checks, with the consequent diffusion of power and absence of direct and definite responsibility, is much better adapted to the purposes of a self-seeking, corrupt minority than to the ends of good government. The evils of such a system which are mainly those of minority domination must be carefully distinguished from those which result from majority control. The critics of American political institutions have as a rule ignored the former or constitutional aspect of our political

evils, and have held majority rule accountable for much that our system of checks has made the majority powerless to prevent. The evils of our party system, having their roots in the lack of popular control over the party machine, are thus largely a consequence of the checks on the power of the majority contained in the Constitution itself. In other words, they are the outcome, not of too much, but of too little democracy.

The advocates of political reform have directed their attention mainly to the party machine. They have assumed that control of the party organization by the people would give them control of the government. If this view were correct, the evils which exist could be attributed only to the ignorance, want of public spirit and lack of capacity for effective political coöperation on the part of the people. But as a matter of fact this method of dealing with the problem is open to the objection that it mistakes the effect for the cause. It should be clearly seen that a system of constitutional checks, which hedges about the power of the majority on every side, is incompatible with majority rule; and that even if the majority controlled the party organization, it could control the policy of the government only by breaking down and sweeping away the barriers which the Constitution has erected against it. It follows that all attempts to establish the majority in power by merely reforming the party must be futile.

Under any political system which recognizes the right of the majority to rule, responsibility of the government to the people is the end and aim of all that the party stands for. Party platforms and popular elections are not ends in themselves, but only means by which the people seek to make the government responsive to public opinion. Any arrangement of constitutional checks, then, which defeats popular control, strikes down what is most vital and fundamental in party government. And since the party under our system cannot enforce public opinion, it is but natural that the people should lose interest in party affairs. This furnishes an explanation of much that is peculiar to the

American party system. It accounts for that seeming indifference and inactivity on the part of the people generally, which have allowed a small selfish minority to seize the party machinery and use it for private ends. . .

3. THE NECESSITY OF STRONG PARTIES IN THE UNITED STATES [1]

The federal nature of our government makes party control difficult. The dispersion of authority, however, increases the number of office holders who can be mustered to the support of a party. A strong organization must be formed to enable the party manager to control the extensive machinery by which voters and men in office can be kept loyal to the party.

(Government) can be solidified and drawn to system only by the external authority of party, an organization outside the government and independent of it. Not being drawn together by any system provided in our constitutions, being laid apart, on the contrary, in a sort of jealous dispersion and analysis by Whig theory enacted into law, it has been necessary to keep the several parts of the government in some kind of workable combination by outside pressure, by the closely knit imperative discipline of party, a body that has no constitutional cleavages and is free to tie itself into legislative and executive functions alike by its systematic control of the *personnel* of all branches of the government.

Fortunately, the federal executive is not dispersed into its many elements as the executive of each of our States is. The dispersion of our state executive runs from top to bottom. The governor has no cabinet. The executive officers of state associated with him in administration are elected as he is. Each refers his authority to particular statutes or particular clauses of the state constitution. Each is responsible politically to his

[1] Wilson, W., *Constitutional Government in the United States*. Columbia University Press, New York, 1908; pp. 204–213.

constituents, the voters of the State, and, legally, to the courts and their juries. But in the federal government the executive is at least in itself a unit. Every one subordinate to the President is appointed by him and responsible to him, both legally and politically. He can control the *personnel* and the action of the whole of the great "department" of government of which he is the head. The Whig doctrine is insisted on only with regard to dealings of the legislature or the executive with the courts. The three great functions of government are not to be merged or even drawn into organic coöperation, but are to be balanced against one another in a safe counterpoise. They are interdependent but organically disassociated; must coöperate, and yet are subject to no common authority.

The way in which the several branches of the federal government have been separately organized and given efficiency in the discharge of their own functions has only emphasized their separation and jealous independence. The effective organization of the House under its committees and its powerful speaker, the organization of the Senate under its steering committees, the consolidation of the executive under the authority of the President, only render it the more feasible and the more likely that these several parts of the government will act with an all too effective consciousness of their distinct individuality and dignity, their distinct claim to be separately considered and severally obeyed in the shaping and conduct of affairs. They are not to be driven, and there is no machinery of which the Constitution knows anything by which they can be led and combined.

It is for that reason that we have had such an extraordinary development of party authority in the United States and have developed outside the government itself so elaborate and effective an organization of parties. They are absolutely necessary to hold things thus disconnected and dispersed together and give some coherence to the action of political forces. There are, as I have already explained in another connection, so many

officers to be elected that even the preparation of lists of candidates is too complicated and laborious a business to be undertaken by men busy about other things. Some one must make a profession of attending to it, must give it system and method. A few candidates for a few conspicuous offices which interested everybody, the voters themselves might select in the intervals of private business; but a multitude of candidates for offices great and small they cannot choose; and after they are chosen and elected to office they are still a multitude, and there must be somebody to look after them in the discharge of their functions, somebody to observe them closely in action, in order that they may be assessed against the time when they are to be judged. Each has his own little legal domain; there is no interdependence amongst them, no interior organization to hold them together. There must, therefore, be an exterior organization, voluntarily formed and independent of the law, whose object it shall be to bind them together in some sort of harmony and coöperation. That exterior organization is the political party. The hierarchy of its officers must supply the place of a hierarchy of legally constituted officials.

Nowhere else is the mere maintenance of the machinery of government so complex and difficult a matter as in the United States. It is not as if there were but a single government to be maintained and officered. There are the innumerable offices of States, of counties, of townships, of cities, to be filled; and it is only by elections, by the filling of offices, that parties test and maintain their hold upon public opinion. Their control of the opinion of the nation inevitably depends upon their hold on the many localities of which it is made up. If they lose their grip upon the petty choices which affect the daily life of counties and cities and states, they will inevitably lose their grip upon the greater matters, also, of which the action of the nation is made up. Parties get their coherence and prestige, their rootage and solidity, their mastery over men and events, from their command of detail, their control of the little tides that eventually

flood the great channels of national action. No one realizes more completely the interdependence of municipal, state, and federal elections than do the party managers. Their parties cannot be one thing for the one set of elections and another for the other; and the complexity of the politician's task consists in the fact that, though from his point of view interdependent and intimately connected, the constantly recurring elections of a system under which everybody is elected are variously scattered in time and place and object.

We have made many efforts to separate local and national elections in time in order to separate them in spirit. Many local questions upon which the voters of particular cities or counties or States are called upon to vote have no connection whatever either in principle or in object with the national questions upon which the choice of congressmen and of presidential electors should turn. It is ideally desirable that the voter should be left free to choose the candidates of one party in local elections and the candidates of the opposite party in national elections. It is undoubtedly desirable that he should go further and separate matters of local administration from his choice of party altogether, choosing his local representatives upon their merits as men without regard to their party affiliations. We have hopefully made a score of efforts to obtain "non-partisan" local political action. But such efforts always in the long run fail. Local parties cannot be one thing for one purpose and another for another without losing form and discipline altogether and becoming hopelessly fluid. Neither can parties form and re-form, now for this purpose and again for that, or be for one election one thing and for another another. Unless they can have local training and constant rehearsal of their parts, they will fail of coherent organization when they address themselves to the business of national elections. For national purposes they must regard themselves as parts of greater wholes, and it is impossible under such a system as our own that they should maintain their zest and interest in their business if their

only objects are distant and general objects, without local rootage or illustration, centering in Congress and utterly disconnected with anything that they themselves handle. Local offices are indispensable to party discipline as rewards of local fidelity, as the visible and tangible objects of those who devote their time and energy to party organization and undertake to see to it that the full strength of the party vote is put forth when the several local sections of the party are called upon to unite for national purposes. If national politics are not to become a mere game of haphazard amidst which parties can make no calculations whatever, systematic and disciplined connections between local and national affairs are imperative, and some instrument must be found to effect them. Whatever their faults and abuses, party machines are absolutely necessary under our existing electoral arrangements, and are necessary chiefly for keeping the several segments of parties together. No party manager could piece local majorities together and make up a national majority, if local majorities were mustered upon non-partisan grounds. No party manager can keep his lieutenants to their business who has not control of local nominations. His lieutenants do not expect national rewards: their vital rootage is the rootage of local opportunity.

Just because, therefore, there is nowhere else in the world so complex and various an electoral machinery as in the United States, nowhere else in the world is party machinery so elaborate or so necessary. It is important to keep this in mind. Otherwise, when we analyze party action, we shall fall into the too common error of thinking that we are analyzing disease. As a matter of fact, the whole thing is just as normal and natural as any other political development. The part that party has played in this country has been both necessary and beneficial, and if bosses and secret managers are often undesirable persons, playing their parts for their own benefit or glorification rather than for the public good, they are at least the natural fruits of the tree. It has borne fruit good and bad, sweet

and bitter, wholesome and corrupt, but it is native to our air and practice and can be up-rooted only by an entire change of system.

All the peculiarities of party government in the United States are due to the too literal application of Whig doctrine, to the infinite multiplication of elective offices. There are two things to be done for which we have supplied no adequate legal or constitutional machinery: there are thousands of officials to be chosen and there are many disconnected parts of government to be brought into coöperation. "It may be laid down as a political maxim that whatever assigns to the people a power which they are naturally incapable of wielding takes it away from them." They have, under our Constitution and statutes, been assigned the power of filling innumerable elective offices; they are incapable of wielding that power because they have neither the time nor the necessary means of coöperative action; the power has therefore been taken away from them, not by law but by circumstances, and handed over to those who have the time and the inclination to supply the necessary organization; and the system of election has been transformed into a system of practically irresponsible appointment to office by private party managers, — irresponsible because our law has not yet been able to devise any means of making it responsible. It may also be laid down as a political maxim that when the several chief organs of government are separated by organic law and offset against each other in jealous seclusion, no common legal authority set over them, no necessary community of interest subsisting amongst them, no common origin or purpose dominating them, they must of necessity, if united at all, be united by pressure from without; and they must be united if government is to proceed. They cannot remain checked and balanced against one another; they must act, and act together. They must, therefore, of their own will or of mere necessity obey an outside master.

Both sets of dispersions, the dispersion of offices and the

dispersion of functions and authorities, have coöperated to produce our parties, and their organization. Through their caucuses, their county conventions, their state conventions, their national conventions, instead of through legislatures and cabinets, they supply the indispensable means of agreement and coöperation, and direct the government of the country both in its policy and in its *personnel*. Their local managers make up the long and variegated lists of candidates made necessary under our would-be democratic practice; their caucuses and local conventions ratify the choice; their state and national conventions add declarations of principle and determine party policy. Only in the United States is party thus a distinct authority outside the formal government, expressing its purposes through its own separate and peculiar organs and permitted to dictate what Congress shall undertake and the national administration address itself to. Under every other system of government which is representative in character and which attempts to adjust the action of government to the wishes and interests of the people, the organization of parties is, in a sense, indistinguishable from the organs of the government itself. Party finds its organic lodgment in the national legislature and executive themselves. The several active parts of the government are closely united in organization for a common purpose, because they are under a common direction and themselves constitute the machinery of party control. Parties do not have to supply themselves with separate organs of their own outside the government and intended to dictate its policy, because such separate organs are unnecessary. The responsible organs of government are also the avowed organs of party. The action of opinion upon them is open and direct, not circuitous and secret.

It is interesting to observe that as a consequence the distinction we make between "politicians" and "statesmen" is peculiarly our own. In other countries where these words or their equivalents are used, the statesman differs from the poli-

tician only in capacity and in degree, and is distinguished as a public leader only in being a greater figure on the same stage, whereas with us politicians and statesmen differ in kind. A politician is a man who manages the organs of the party outside the open field of government, outside executive offices and legislative chambers, and who conveys the behests of party to those who hold the offices and make laws; while a statesman is the leader of public opinion, the immediate director (under the politicians) of executive or legislative policy, the diplomat, the recognized public servant. The politician, indeed, often holds public office and attempts the rôle of statesman as well, but, though the rôles may be combined, they are none the less sharply distinguishable. Party majorities which are actually in control of the whole legislative machinery, as party majorities in England are, determine party programs by the use of the government itself, — their leaders are at once "politicians" and "statesmen"; and, the function being public, the politician is more likely to be swallowed up in the statesman. But with us, who affect never to allow party majorities to get in complete control of governmental machinery if we can prevent it by constitutional obstacles, party programs are made up outside legislative chambers, by conventions constituted under the direction of independent politicians, — politicians, I mean, who are, at any rate in respect of that function, independent of the responsibilities of office and of public action; and these independent conventions, not charged with the responsibility of carrying out their programs, actually outline the policy of administrations and dictate the action of Congress, the irresponsible dictating to the responsible, and so, it may be, destroying the very responsibility itself. "The peculiarities of American party government are all due to this separation of party management from direct and immediate responsibility for the administration of the government."

II. The Development of Party Organization in the United States

1. (*a*) The early fear of party influence[1]

The makers of the Constitution looked upon political parties as pernicious. They sought to frame a government which would disregard them and base the elections on ability without any reference to "factional" divisions.

Among the numerous advantages promised by a well constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice and confusion, introduced into the public councils, have in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. . .

[1] Madison, J., in the *Federalist*, No. X, 1787.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said, than of the first remedy, that it was worse than the disease. Liberty is to faction, what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. . .

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders, ambitiously contending for preëminence and power; or to persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to coöperate for their common good. So strong is this propensity of mankind,

to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause; because his interest will certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? and what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice

and the public good. The apportionment of taxes on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party, to trample on the rules of justice. Every shilling, with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought is, that the causes of faction cannot be removed; and that relief is only to be sought in the means of controlling its effects.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one

of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such coexistent passions or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know, that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure from the mischiefs of faction. A common passion or interest will, in almost every case be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general, been as short in their lives as they have been violent in their deaths. . .

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from a pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. . .

The other point of difference is, the greater number of citizens and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens, or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

(*b*) THE EARLY FEAR OF PARTY INFLUENCE [1]

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me on an occasion like

[1] Washington, G., Farewell Address. *Writings of Washington*, Evans, L. B., ed. Putnam's, New York, 1908; p. 539 *et seq.* (excerpt).

the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments; which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a People. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsels. Nor can I forget, as an encouragement to it your indulgent reception of my sentiments on a former and not dissimilar occasion. . .

To the efficacy and permanency of your Union, a Government for the whole is indispensable. No alliances however strict between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of Government, better calculated than your former for an intimate Union, and for the efficacious management of your common concerns. This government, the offspring of your own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its Laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true Liberty. The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. But the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish Government, presupposes the duty of every individual to obey the established Government.

All obstructions to the execution of the Laws, all combinations

and associations, under whatever plausible character, with the real design to direct, controul, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force — to put, in the place of the delegated will of the Nation, the will of a party; — often a small but artful and enterprising minority of the community; — and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils, and modified by mutual interests. However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the Power of the People and to usurp for themselves the reins of Government; destroying afterwards the very engines which have lifted them to unjust dominion.

Towards the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of Governments, as of other human institutions — that experience is the surest standard, by which to test the real tendency of the existing Constitution of a Country — that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion: — and remember, especially, that

for the efficient management of your common interests, in a country so extensive as ours, a Government of as much vigour as is consistent with the perfect security of Liberty is indispensable. Liberty itself will find in such a Government, with powers properly distributed and adjusted, its surest Guardian. It is indeed little else than a name, where the Government is too feeble to withstand the enterprises of faction, to confine each member of the Society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of Parties in the State, with particular reference to the founding of them on Geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the Spirit of Party, generally.

This Spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all Governments, more or less stifled, controuled, or represented; but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an Individual: and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.

Without looking forward to an extremity of this kind, (which nevertheless ought not to be entirely out of sight), the common and continual mischiefs of the spirit of Party are sufficient to

make it the interest and duty of a wise People to discourage and restrain it.

It serves always to distract the Public Councils, and enfeeble the Public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riot and insurrection. It opens the doors to foreign influence and corruption, which find a facilitated access to the Government itself through the channels of party passions. Thus the policy and the will of one country, are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the Administration of the Government, and serve to keep alive the Spirit of Liberty. This within certain limits is probably true — and in Governments of a Monarchical cast, Patriotism may look with indulgence, if not with favour, upon the spirit of party. But in those of the popular character, in Governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose, — and there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched; it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

2. EARLY MENTION OF CAUCUSES AND THEIR IMPORTANCE [1]

Informal meetings to agree on a united method of action in the elections date from before the Revolution. The most famous of these early clubs is doubtless the Boston Caucus Club, one of whose meetings is here described by John Adams.

BOSTON. February. This day learned that the Caucus Club meets, at certain times in the garret of Tom Dawes, the Adjutant of the Boston Regulars. He has a large house, and he has a

[1] Adams, John. *The Works of John Adams*, edited by C. F. Adams. Little and Brown, Boston, 1850; Vol. II, p. 144.

movable partition in his garret which he takes down, and the whole club meets in one room. There they smoke tobacco till you cannot see from one end of the garret to the other. There they drink flip, I suppose, and there they choose a moderator, who puts questions to the vote regularly; and selectmen, assessors, collectors, wardens, fire-wards, and representatives, are regularly chosen before they are chosen in the town. Uncle Fairfield, Story, Ruddock, Adams, Cooper, and a *rudis indigestague moles* of others are members.[1] They send committees to wait on the merchant's club, and to propose and join in the choice of men and measures. Captain Cunningham says, they have often solicited him to go to those caucuses; they have assured him benefits in his business, etc.

[1] Gordon assigns a very early date for this practice. He says: "More than fifty years ago," (from 1774), "Mr. Samuel Adams's father and twenty others, one or two from the north end of the town, where all the ship business is carried on, used to meet, make a caucus, and lay their plan for introducing certain persons into places of trust and power. When they had settled it, they separated, and used each their particular influence within his own circle. He and his friends would furnish themselves with ballots, including the names of the parties fixed upon, which they distributed on the days of election. By acting in concert, together with a careful and extensive distribution of ballots, they generally carried the elections to their own mind. In like manner it was, that Mr. Samuel Adams first became a representative for Boston." — *History of the American Revolution*, Vol. I, p. 365, note.

3. THE CONGRESSIONAL CAUCUS [1]

The National Government did not remain free from political struggles as the founders had wished. The legislature soon became the battle ground of the parties. This was a natural development, for there were gathered representatives from the various districts who had the party interests constantly in mind. Unfortunately only those districts were represented at the party councils which had been controlled by the party at the *previous* election. Difficulty of communication, however,

[1] Ostrogorski, M., *Democracy and the Organization of Political Parties*. Macmillan, New York, 1902; Vol. II, pp. 13–19.

made any other method of organization even less satisfactory. Undemocratic though it was, the congressional caucus and the corresponding legislative caucus in the states became the accepted method of united party action.

In the first two presidential elections the choice of the candidates took place of itself, so to speak: Washington was marked out on all sides for the chief magistracy of the new republic; he was elected and re-elected by acclamation to the Presidency, and with him John Adams to the Vice-Presidency. But after Washington's imminent retirement, in 1796, the struggle began. About the anti-Federalist candidate there were no differences of opinion; he was, of course, Thomas Jefferson, while on the Federalist side there was not the same unanimity in favour of John Adams, whose occupancy of the dignity of Vice-President for eight years, by the side of Washington, pointed him out as the latter's successor. In spite of some intrigues against him within the ranks of the Federalists, he was nevertheless elected. But the antipathy with which he inspired several Federalist leaders, and especially Hamilton, broke out with renewed vigour at the approach of the election of 1800. The want of unanimity in the Federalist camp was aggravated by the confusion caused by the death of Washington, whose great prestige alone still shielded the Federalist party, which was daily losing ground in the country although it had a majority in Congress. The imminent danger of the success of Jefferson and of the triumph of radicalism in the government appeared to the Federalists of the Congress to demand their intervention in the presidential election, from which the Constitution had carefully banished them. For some time past the Federalist members of Congress, and the Senators in the first place, had been in the habit of holding semi-official meetings, to which the familiar name of caucus was applied, to settle their line of conduct beforehand on the most important questions coming before Congress. The decisions arrived at by the majority of the members present were considered as in honour binding the minority; being consequently

clothed with a moral sanction, they gave these confabulations an equitable basis and almost a legal authority. In this way there grew up at an early stage, at the very seat of Congress, an extra-constitutional institution which prejudged and anticipated its acts. It was now about to reach out still further and lay hold of a matter which was entirely beyond the competence of Congress. It appears that this was done at the instigation of Hamilton, who, being anxious to push Adams on one side and to prevent the election of Jefferson, wanted to get the electoral manœuvre which he had hit upon for this purpose sanctioned by a formal decision of the members of the party in Congress. The latter took the decision, nominated in consequence the candidates for the Presidency and the Vice-Presidency of the Union, and agreed to try and get them accepted by the Electors. This nomination became the precedent for a practice which completely destroyed the whole scheme of the provisions of the Constitution for the election of the President. The electoral device adopted by the Federalist caucus became known through a private letter from one of its members to his constituents; the Caucus took care not to give it out in its own name, it wrapped all its proceedings in profound secrecy. And when a journalist of the opposition, the famous W. Duane, denounced them in his paper *Aurora*, published at Philadelphia, and attacked the actual practice of the caucuses, the "Jacobinical conclave," he was called before the bar of the Senate for his "falsely defamatory, scandalous, and malicious assertions," and barely managed to escape from the formal proceedings which had been taken against him. In their anti-Federalist press of Boston a violent protest was also made against "the arrogance of a number of Congress to assemble as an electioneering caucus to control the citizens in their constitutional rights." But this did not prevent the Republicans themselves, the anti-Federalist members of Congress, from holding a caucus, also secret, for the nomination of candidates to the two highest executive offices of the Union; they had only to concern themselves with the Vice-Presidency, how-

ever, since Jefferson's candidature for the first of these posts was a foregone conclusion. It seems that Madison, the future President of the United States, took the leading part in this caucus.

At the next presidential election, in 1804, the Congressional Caucus reappeared, but on this occasion it no longer observed secrecy. The Republican members of Congress met publicly and settled the candidatures with all the formalities of deliberative assemblies, as if they were acting in pursuance of their mandate. The Federalists, who were almost annihilated as a party since Jefferson's victory, in 1801, gave up holding caucuses altogether. Henceforth there met only a Republican Congressional Caucus, which appeared on the scene every four years at the approach of the presidential election. To strengthen its action in the country it provided itself (in 1812) with a special organ in the form of a corresponding committee, in which each State was represented by a member, and which saw that the decisions of the Caucus were respected. Sometimes the state Caucuses intervened in the nomination of candidates for the presidency of the Republic; they proposed names, but in any event the Congressional Caucus always had the last word. Thus in 1808, with two powerful competitors for the succession to Jefferson, Madison and Monroe, both put forward in the influential Caucus of Virginia, the Congressional Caucus pronounced for Madison, while taking the formal precaution to declare that the persons present made this recommendation in their "private capacity of citizens." Several members of Congress, who did not want to have Madison, appealed to the country, protesting not only against the regularity of the procedure of the Caucus, but also against the institution of the Caucus itself. The Caucus none the less won the day, the whole party in the country accepted its decision, and Madison was elected. The same thing took place in 1812, in spite of an attempted split in the State of New York, the Legislature of which officially brought forward its illustrious statesman, DeWitt Clinton,

against Madison, who was seeking re-election. In vain did the Legislature of New York, in a manifesto issued for the occasion, try to stir up local jealousies, by protesting against the habitual choice for the presidency of citizens of the State of Virginia, against the perpetuation of the "Virginia dynasty"; in vain did it appeal to democratic susceptibilities by denouncing the usurpation by the coterie of the Congressional Caucus of a right belonging to the people. Madison was re-elected. In 1816, when the Caucus met again to choose a successor to Madison, Henry Clay brought in a motion declaring the nomination of the President in caucus inexpedient, but his proposal was rejected; a similar resolution introduced by another member shared the same fate. The Caucus adopted the candidature of Monroe, who was Madison's favourite, just as this latter was in a way designated to the Caucus by his predecessor Jefferson. The majority obtained by Monroe was but slight (65 votes to 54), but as soon as the result was announced Clay at once requested the assembly to make Monroe's nomination unanimous. Such was the weight which the decision of the majority of the Caucus had with every member, that it was considered binding in honour on him as well as on every adherent of the party in the country who did not care to incur the reproach of political heresy, of apostasy. Under cover of these notions there arose in the American electorate the convention, nay, the dogma, of *regular* candidatures, adopted in party councils, which alone have the right to court the popular suffrage. Complying with this rule, the Electors, who, according to the Constitution, were to be the unfettered commissioners of the people in the choice of the chief magistrate, and to consult only their judgment and their conscience, simply registered the decision taken at Washington by the Congressional Caucus.

The authority of the Congressional Caucus which got its recommendations accepted with this remarkable alacrity and made the "nomination" equivalent to the election, rested on two facts. On the one hand, there was the prestige attaching to the rank of

the men who composed the Caucus and to their personal position in the country. They represented in the capital of the Union the same social and political element, and in a still higher degree, which the members of the legislative caucuses represented in the States, that is, the leadership of the natural chiefs, whose authority was still admitted and tacitly acknowledged. . .

The members of the Congressional Caucus and the members of the legislative caucuses of the States, or, to use Hamilton's expression, "the leaders of the second class" constituted in fact a sort of political family, and the latter spontaneously became the agents of the Congressional Caucus; they were, in the language of a contemporary, "as prefects" to it, set in motion by a simple exchange of private letters.

Again, the members of the Caucus represented the *force majeure* of the interests of the Republican party, which enforced discipline, which compelled obedience to the word of command from whatever quarter it proceeded. Rightly or wrongly, the anti-Federalists believed that the Republic and liberty were in mortal danger, that they were menaced by the Federalists, whose political ideal was the English constitutional monarchy, and who, having no confidence in the people, in its intelligence and its virtue, were bent on an authoritarian "consolidated" government. . .

The Federalist party soon succumbed, but the recollection of the dangers, real or imaginary, to which liberty and equality were exposed by it, survived it and for many a long day was a sort of bugbear which the leaders of the victorious party had no scruple about using for the consolidation of their power. To prevent the Federalists from returning to the charge, the Republicans had to carefully guard against divisions, and it was to avoid them, to concentrate all the forces of the party in the great fight for the Presidency, that the Congressional Caucus obligingly offered its services.

4. HOW THE CONGRESSIONAL NOMINATING CAUCUS WORKED[1]

The following account gives a picture of the Congressional Caucus just before it was discarded as a means of nominating the President.

CHAMBER OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

FEBRUARY 14, 1824.

At a meeting of the republican members of Congress, assembled this evening pursuant to public notice, for the purpose of recommending to the people of the United States suitable persons to be supported at the approaching election, for the offices of president and vice president of the United States:

On motion of Mr. James Barbour, of Virginia —

Mr. Benjamin Ruggles, a senator from the state of Ohio, was called to the chair, and Mr. Ela Collins, a representative from the state of New York, was appointed secretary.

Resolved, That this meeting do now proceed to designate, by ballot, a candidate for president of the United States.

Determined in the affirmative.

On motion of Mr. Van Buren of New York, it was

Resolved, That the Chairman call up the republican members of congress by states, in order to receive their respective ballots.

Whereupon the Chairman proceeded to a call, and it appeared the following members were present. . .

Mr. Bassett, of Virginia, and Mr. Cambrelong, of New York, were appointed tellers, and, on counting the ballots, it appeared that

William H. Crawford had sixty-four votes,
John Quincy Adams two votes,
Andrew Jackson one vote, and
Nathaniel Macon one vote.

[1] Niles, *Weekly Register*, I, 3d ser., 388 *et seq.*

Mr. Dickinson of New York then submitted the following resolution, which was agreed to:

Resolved, That this meeting do now proceed to designate, by ballot, a candidate for the office of vice president of the United States.

Mr. Van Buren, of New York, then stated that he was authorized to say that the vice president having, some time since, determined to retire from public life, did not wish to be regarded by his friends as a candidate for reëlection to that office.

On counting the ballots, it appeared that Albert Gallatin, of Pennsylvania, had fifty-seven votes; John Q. Adams of Massachusetts, one vote; Samuel Smith of Maryland, one vote; William King of Maine, one vote; Richard Rush of Pennsylvania, one vote; Erastus Root of New York, two votes; John Tod of Pennsylvania, one vote; and Walter Lowrie of Pennsylvania, one vote.

And, thereupon, Mr. Clark of New York submitted the following resolution, to wit:

Resolved, As the sense of this meeting that William H. Crawford, of Georgia, be recommended to the people of the United States as a proper candidate for the office of president, and Albert Gallatin, of Pennsylvania, for the office of vice president of the United States, for four years from the 4th of March 1825.

Resolved, That, in making the foregoing recommendation, the members of this meeting have acted in their individual characters, as citizens; that they have been induced to this measure from a deep and settled conviction of the importance of union among republicans, throughout the United States, and, as the best means of collecting and concentrating the feelings and wishes of the people of the union, upon this important subject. The question being put upon these resolutions, they were unanimously agreed to.

Mr. Holmes of Maine then moved that the proceedings of the meeting be signed by the chairman and secretary, and published,

together with an address to the people of the United States, to be prepared by a committee to be appointed for the purpose.

On motion, it was ordered that this committee consist of the chairman and secretary of the convention, together with the gentlemen whose names were signed to the notice calling the meeting.

On motion, it was further

Resolved, That the chairman and secretary inform the gentlemen nominated for the offices of president and vice president of their nomination, and learn from them whether they are willing to serve in the said offices, respectively.

BENJAMIN RUGGLES, *Chairman.*

E. COLLINS, *Secretary.*

5. THE TRANSITION FROM THE CONGRESSIONAL CAUCUS TO THE NOMINATING CONVENTION [1]

With improved methods of communication, and greater interest in politics on the part of the people, the feeling developed that the Legislative or Congressional Caucus was a usurpation by a few officeholders of the right to control the party machinery. A revolt within the party, to make the organization more democratic, arose which resulted in the creation of the modern nominating convention.

12. Previous to the election of 1824, . . . candidates for the Presidency were nominated by a Congressional caucus. With the commencement of the revolt against the caucus system several other methods of nomination sprang up which, during the campaign of 1828, obtained possession of the field. The first of these methods is that of nomination by a State legislature acting in its official capacity. This was not an entirely new method. In 1807 President Jefferson received addresses from the legislatures of several states, approving the general course of his administration, and asking him to accept for the third time

[1] Dallinger, F. W., *Nominations for Elective Office.* Longmans, New York, 1903; pp. 29–34.

the Republican nomination. During the same year both branches of the Kentucky Legislature unanimously recommended James Madison as a candidate for the Presidency. In all the cases previous to 1824, however, the real work of nomination was in the hands of the Congressional caucus, the action of the legislatures being entirely subsidiary. It was not until the campaign of 1824 that nomination "by act of the legislature" came to have any real significance. The form of such nominations is very well shown by the joint resolution adopted by the Alabama Legislature in 1824 recommending Andrew Jackson for the Presidency. After a long preamble comes the following resolution:

Be it therefore resolved by the Senate and House of Representatives of the State of Alabama in general assembly convened that we believe it is the ardent wish of a large majority of our constituents that General Andrew Jackson should succeed Mr. Monroe as President of the United States of America, and we have no doubt he will receive the undivided support of the State of Alabama; wherefore, be it resolved, that the governor of this State be, and he is hereby, requested to transmit to the governors of each of our sister States, copies of the foregoing preamble and resolution.

In this case, however, the joint resolution was vetoed by Governor Pickens, who, in his veto message, after warmly indorsing the sentiment of the resolutions, gave the following reasons for his action:

It is because I believe it is not fairly within the legitimate sphere of legislation, and, so far as my knowledge extends, without any previous example, and would be introductory of unnecessary, if not mischievous, matters into our legislative deliberations, that I am induced not to add my signature to the joint resolutions.

After the above veto the resolutions were laid on the table, and subsequently a resolution was introduced and adopted by both houses, requesting the Speaker of the House of Representatives and the President of the Senate to transmit a copy of the

resolutions to the executive of each State, and to each of the Alabama Senators and Representatives at Washington.

This method of nomination, which was common in the campaigns of 1824, 1828 and 1832, continued to exist even after the adoption of the national convention in 1832. For instance, in January, 1835, Hugh L. White was nominated for the Presidency by a joint resolution of the Alabama Legislature; while as late as 1842 John C. Calhoun was nominated by the legislatures of South Carolina and Georgia as a candidate for the election of 1844. But as the national convention system came to be better organized, this method of nomination gradually disappeared.

13. Presidential Nominations by State Legislative Caucus. Closely akin to the method just described was that of nomination of national candidates by a joint caucus of the party members of both branches of a State legislature. The first case of actual nomination by this method was the nomination of DeWitt Clinton by a caucus of the Republican members of the New York Legislature in 1812. With the commencement of the campaign of 1824, it began to be generally adopted, and was the commonest mode of nomination during the period of transition from the Congressional caucus to the national convention. The mode of procedure may perhaps be best illustrated by the following example.

On November 18, 1822, in accordance with a previous notice, a meeting of the Republican members of the Senate and House of Representatives of the Kentucky Legislature was held in the hall of the House of Representatives after the adjournment of the two branches. The call for the meeting stated the object to be "the consideration of the propriety of recommending to the people of the United States some suitable person to fill the office of President of the United States after the expiration of the present presidential term." The meeting was organized by the choice of William T. Barry as chairman and Thomas Speed as secretary. Mr. George Robertson then offered a resolution and

address, which were unanimously adopted. The resolution read as follows:

Resolved, That Henry Clay, late Speaker of the House of Representatives, be recommended as a suitable person to succeed James Monroe as president.

The address which followed the resolution states Kentucky's claim to the Presidency on the ground of locality, and then proceeded to eulogize her favorite son in the most glowing terms.

This method of nomination by State legislative caucus, like its contemporary official method, continued to exist after 1832, but it likewise disappeared with the firm establishment of the convention system.

14. Presidential Nominations by Mixed Conventions. Another method of nominating national candidates in vogue during the transition period was by a convention composed of the party members of the legislature, together with delegates from those counties or towns not represented in the legislature by members belonging to the party holding the convention. A good example of this method is to be found in the nomination of John Quincy Adams in January, 1823, at a "joint meeting of the Republican members of the Massachusetts legislature and of Republican delegates from the various towns of the commonwealth not represented in the legislature. The mode of procedure of such a body was exactly the same as that of the legislative caucus already described.

This method, like those previously described, is occasionally met with after the general adoption of the convention system. For instance, in February, 1843, a convention composed of the Whig members of the Virginia Legislature, and of two hundred delegates from different parts of the State, was held at Richmond, at which resolutions were adopted nominating Henry Clay as the Whig candidate for the Presidency, and referring the nomination of a candidate for the Vice-Presidency to the national convention.

15. Presidential Nominations by State Conventions. Still another method of nominating candidates for the Presidency is found in the proceedings of a "Jackson" State convention held at Harrisburg, Pennsylvania, in January, 1828, at which the following preamble and resolutions were unanimously adopted:

Whereas, the Democratic citizens of this commonwealth in accordance with the established usages of the party, have delegated to this convention the important trust of nominating candidates for the presidency and vice-presidency of the United States, to be supported at the approaching presidential election: And whereas the voice of the Democratic party has been unequivocally expressed in favor of that illustrious and patriotic citizen, Andrew Jackson of Tennessee, as president, and John C. Calhoun of South Carolina, as vice-president,

Resolved, That Andrew Jackson of Tennessee be nominated as the Democratic candidate of Pennsylvania for the office of president of the United States, —

Resolved, That John C. Calhoun of South Carolina be nominated for the office of vice-president of the United States.

A committee was appointed to draft an address to the "democratic republican citizens of Pennsylvania on the subject of the approaching election," and in addition a "central committee of correspondence" was appointed, and also similar committees of every county in the State. A full election ticket was named in the Jackson interest. A resolution was then passed that each candidate nominated for the office of Presidential elector give "a written pledge or assurance" that if elected he would vote for the nominees of the convention. In case any candidate refused or neglected to give such a pledge, the central committee was empowered to substitute some other person in his place. The central committee was also empowered to fill all vacancies that might occur. After ordering that fifteen thousand copies of the address be printed, — one-third of them in the German language, — the convention adjourned.

Even after the adoption of the convention system in national

politics, the State conventions continued to nominate candidates for the Presidency, the effect being merely an expression of the sentiment of the party in the State. The practice of instructing delegates by a resolution of the State convention to vote for a certain person or persons at the national convention which subsequently arose, and which still exists, is apparently a survival of the former system of actual nomination.

16. Presidential Nominations by Public Meetings. One of the most interesting features of the campaign of 1824 was the almost universal practice of obtaining the preferences of the people as to Presidential candidates at all sorts of public gatherings. All over the country mass meetings were held, at which a regular ballot was taken, just as at a regular election. At very many of these meetings formal resolutions were adopted nominating some candidate for the Presidency. For example, in March, 1824, such a meeting was held at Fredericksburg, Virginia, at which John Quincy Adams was nominated for the Presidency and Andrew Jackson for the Vice-Presidency, — a very peculiar combination. These meetings were in reality simply meetings held to ratify the nomination of candidates who had been previously nominated in one or more of the ways already described. In other words, they were what we to-day call "rallies," the only difference being the formal adoption of nominating resolutions.

17. Reasons for a Change of System. All of the five methods of nomination for national offices which have just been described could obviously be nothing more than temporary expedients. In the first place, all except the State convention had become antiquated; and secondly, the first three were unpopular, because they were forms of legislative interference which, in the case of State nominations, had already been abandoned in many of the States, and which, in national politics, had met with a most emphatic rebuke in the overthrow of the Congressional caucus.

Again, with the reorganization of political parties after the "era of good feeling," and the rapid growth of population, the utter inadequacy of any system of State nomination for national offices became readily apparent. A national party must have a national system of nomination, and the expedient of a convention naturally suggested itself.

III. The Convention and the Direct Primary

1. The strength of the convention system [1]

A convention furnishes a means of bringing out unknown but worthy candidates, discussing the merits of rivals, arousing party enthusiasm, giving consideration to all interests to which the party appeal is to be made, and perfecting the smooth working of the party machinery. At its best, the convention is "a school of practical politics."

Whatever may be said of the present state of this old institution, it ought not to be condemned upon superficial and insufficient grounds. There can be no doubt that in the course of its time-honored existence it has been of inestimable service to this country. Its evolution which has already been traced shows that the forces which created it were democratic; that it arose as the servant of the people. . .

As in the past our nominating institutions have conformed to the times and the tenor of the people, so may the convention system of to-day be changed or wholly abolished. The mere fact of its long existence does not argue for continued life. . .

Theoretically the convention system is perfect. It passes the highest test of a political institution in a democratic community. It admits of the purest application of the principle of representation or delegated authority. Step by step the voice of each individual voter can, in theory, be transmitted from delegate to delegate until finally it finds its perfect expression in the legislature, the executive, or the judiciary. The nearest

[1] Meyer, E. C., *Nominating Systems*. Madison, Wisconsin, 1902; pp. 48–54.

approach to such ideal conditions of operation was reached by the convention system during its early days.

As a party institution, the convention once occupied the highest and most important position. When so conducted as to command the confidence and respect of the party, it was the foundation of party success. Within it there sprang up the central moving figures of the campaign. It contributed to bind party elements firmly together, and to inspire enthusiastic party life, and thereby performed a valuable service in the cause of government. . .

The convention was the foundation of party success, because it furnished an excellent opportunity for the perfection of party organization, as well as for the prosecution of a vigorous campaign, in which all party forces were formed in line and operated with united power for a common end. It afforded an excellent opportunity for the estimation of a party's strength, for it was composed of men from every locality, and from every part of the State. Usually these were representative men, fully cognizant of party conditions in their home community. Through their conference the standing and fortunes of the party were ascertained, and the party policy shaped accordingly.

It also afforded opportunity for the estimation of a candidate's real popularity. Fatal mistakes were sometimes avoided by the timely substitution of new nominees for intended candidates, whose standing with the party masses had been misjudged. A party to be successful must offer to the public, men who will be well supported, and upon whom the people are willing to bestow the title of a public servant. Such candidates could well be chosen in a gathering of party men, representing all geographical areas, all interests, and all factions covered by the election.

It has also happened that in conventions an "undiscovered" candidate of good parts and popular quality was successfully advertised and came before the electorate in time to win success for the party. A capable man, who was unknown to the mass of

party voters, and who might possibly have remained unknown too long to be of service to his party, has been accidentally so discovered and nominated, and his party and the public well served by him.

Likewise, also, men of special merit have found in the meetings of delegates fortunate opportunities for acquiring prominence without great loss of time or money. To these time is often more important than money. The necessary personal advertising required for a preliminary canvass, aside from its disagreeable features, would have consumed a forbidding amount of time if done with sufficient thoroughness to insure a nomination; while many a young man of ability would have found the drain upon his finances in conducting a protracted personal campaign too severe to enable him to win the day for himself in the usual way.

A harmonious party convention has always presented excellent opportunities for arousing party enthusiasm. Under such conditions partisan meets partisan, speeches are made and heard, the party enthusiasm of the North greets that of the South, the party cry of the West mingles with that of the East, party spirit rises to its height, and inspires its color bearers to act their best. Not only would party fires flame up in such conventions, but each of the delegates returning to his community warmed with the spirit of party enthusiasm, would reinforce the local campaign with renewed vigor, and would rally his wavering friends to freshened efforts and stronger party affiliations.

The convention at its best, has also afforded favorable opportunity for the conciliation of party factions. Unity within a party is absolutely necessary for success, unless the minority parties are unusually weak. This unity has always been difficult to maintain. It is natural that party leaders should differ in their conceptions of what would be the best party policies. Each stands at the helm of the party in his own locality, and has his own little band of followers. Each develops his ideas in the light of his home, and rallies to his standard the partisan friends of the neighborhood. Some day they must clash. That day

comes with the opening of the preliminary campaign. The party platform must be formulated, and the party candidates selected. Differences must be adjusted and compromises must be made. The convention when assembled and conducted as a deliberative body controlled by its best elements for the greatest good, would be an ideal place for settling such differences, diminishing the chances of party bolting, because the consummated conciliation would be a general one, effected in the presence of the main party spirits, and hence, as a rule, binding and abiding.

The ideal convention would also enable the selection of representative men who would receive the most general support of the party, because proper emphasis could be placed upon the following important elements of party success: geographical distribution of the candidates; their nationality; their social standing; the class represented; the commercial, industrial, or agricultural interests, etc., that they stood for; the shades of political ideas entertained, — all these matters could be duly considered.

Such a convention would be the place where the party platform could well be formulated. It would be a deliberative and thoroughly representative body, where every locality, every faction, every class, and every interest would find a voice in the meeting. It would be a decidedly up-to-date body. Its delegates would have been but shortly elected, and in a position to define party issues intelligently. The platform which they framed would have the general confidence of the party, and operate as a binding element on dissatisfied members.

The convention thus, in theory, lies at the foundation of party success. It perfects party organization, measures its strength, conciliates its factions, defines its issues, selects its candidates, and arouses enthusiasm. For these many reasons its advocates still regard it as a most valuable instrument in the hands of the party. . .

In its best days the convention was also a school of practical politics. In it the youth of the rising generation, who were to

control the destinies of the Nation, were taught the earlier and simpler lessons of practical politics. They learned to know the constitution and operation of our nominating machinery, and received an insight into the inner workings of party politics. Such experience cannot but prove of great worth to men who in the future assume public leadership and occupy positions of importance in the public service.

2. THE CORRUPT CONVENTION [1]

Any indirect method of representation destroys responsibility. The management of caucuses and conventions has become so complicated that they are practically removed from popular control and fall into the hands of professional politicians.

The convention had been established as the forum of the people, where they should try out the merits of the men offered as candidates and make their final choice. With its caucus representation, coming up from each township and ward in every county, where the individual might attend and cast his vote in selection of some one who should represent him, it had all the form and appearance of a representative democracy. In practice too it had been of real service to the people, as a medium through which to express their will. But the day had long passed, since the plain citizen learned, that the management of caucuses and conventions had been taken charge of by gentlemen trained to the work. In the years of phenomenal material development, while he had been occupied with business affairs, absorbed in his profession, working long hours in the field and factory, when the issues had seemed to him important in a certain sense, but not so deeply, vitally important as when they concerned the fate of government itself — during these years when he had attended to his private affairs and omitted his public duties —

[1] Lafollette, R. M., *Primary Elections*. Address delivered before Michigan University, Ann Arbor, Michigan, March 12, 1898.

a new kind of business had been established. The management of caucuses and conventions had acquired the importance of a profession. Well distributed over the state skilled men served in this employment constantly. The plain citizen had met these gentlemen in the caucuses and conventions, and long ago discovered it was useless to contest with them. They are parts of an organization, select, compact, disciplined. They receive their orders without question and execute them without fear. They are parts of the political machine. They have been able to subvert the caucus and convention and substitute the dictates of the machine for the will of the people. It was not so difficult a task. It required money, the constant co-operation of a few quick minded men, ready of speech, possessed of some knowledge of parliamentary law, a programme carefully worked out in advance and a conscience that sleeps while its owner wakes. The masters of commerce and trade supplied the money. The money secured the men. The rest was easy.

Well might they laugh at the Australian ballot. Not to be obliged to buy an election, simplified matters for them. Well might they say: "Elect whomsoever you will, if we make the nominations." It could not fail to come sooner or later. The very plan of the caucus and convention invited it.

Consider the proceedings to nominate candidates for office, in a political convention even at the best. The delegates are first chosen in a caucus with little or no opportunity for well considered action. No permanent record of its proceedings is preserved. Only a limited number of those who attend, desire to spend the time and money to make a journey to the place, where will be held the convention, not to make nominations, but to elect another set of delegates to attend upon another convention where nominations are to be made. In this intermediate convention the work is necessarily done in haste, the service is very brief. The proceedings of the delegates composing this convention find no fixed place in political history.

The delegates elected to attend upon the nominating conven-

tion are again confronted with the expenditure of a considerable sum of money and a still further contribution of time to make a journey to the place of holding the final or nominating convention. The men willing to undertake this service must do so either from pure loyalty to party, devotion to the interest of some candidate or because they personally aspire to receive some political preferment, and regard the time and money spent in the light of a political investment.

Mark, now, what has transpired! The voter has transferred his interest to the keeping of the delegate in the caucus. He cannot hope that his agent will reflect his convictions in all their original strength. He must expect them to be colored in a measure, by the agent's own opinions. But when the caucus delegate, as a member of the intermediate convention, has again transferred the interest of the voter committed to him in the caucus, to delegates who have been elected to attend the nominating convention — doubtless many or all of them total strangers to him personally — to be again colored by the personal views and prejudices of these sub-agents, the convictions of the plain citizen, the voter back of the original agent and the sub-agents have by this time little more of substance than the dream of a dream. With every transfer of this delegated power, responsibility has weakened until when finally it has made its winding journey to the nominating convention, responsibility to the voter has been lost on the way.

On rare occasions under special provocation the community may arise and overwhelm the minions of the machine in the caucus. Brief victory! Between the precinct caucus and the intermediate convention, the intermediate convention and the nominating convention, are countless pitfalls for the unwary delegate, countless temptations to try his constancy, convenient shifts and subterfuges for him to cover his want of fidelity. In short it is easy for him to blunder, it is easy for him to betray the voter behind him, and it is next to impossible to fasten responsibility upon him for anything he may do.

But let us follow this perversion of representative government to the very end. The time arrives for the meeting of the nominating convention. The delegates elected by the intermediate convention go from every county, to the place designated by the State Central committee, nominally the supreme authority of the party. The gathering of delegates, of prominent politicians, of candidates and the friends of candidates, augmented by the multitude which contest always attracts, crowd the rooms and corridors of the hotels, and the streets of the city. Political "workers," not elected as delegates, many of whom indeed have been defeated as delegates in the local caucus and intermediate convention, arrive early and take active part in the real work of the nominating convention. Though they may have been rejected as untrustworthy representatives of the voters at home, they frequently exercise a controlling influence upon the action of the nominating convention, thus defeating the will of the majority that defeated them as delegates. They plunge at once into the contest and the commotion increases with their onset. Upon all sides men are hurrying to and fro. Glib talkers are heard in heated discussion. Others are quietly moving through the crowd, dropping significant remarks here and there, setting on certain ones to talk, starting rumors and roorbacks, loosening the tongue of scandal and falsehood, questioning, doubting, dealing in hints and innuendoes, raising false issues against one candidate, asserting that there is a division in the support of another, that it is reported that another has given up the contest and withdrawn, that another would be bolted by the Germans or Irish or Norwegians if nominated, and so on and on to the end of evil invention. Every hour the excitement increases. Investigation is baffled. Explanations are of no avail. There is no chance for argument. The truth is discounted. Statements are as good as facts.

The time approaches when the convention will meet. Away in some retired room behind locked doors the masters of the machine sit in quiet conference. They have issued their orders to

those in nominal control. The programme of the convention is all prepared. The temporary and permanent chairmen have been "elected" in advance, notified weeks ago and are present, each with an impromptu speech of acceptance in his little satchel. These men have been selected by the masters of the machine with considerate judgment. There will be no mistakes made. Men designated in advance will be recognized by the chairman for all important motions at the "right time." All troublesome points of order will be promptly overruled. All motions will be decided in the "right way." These precautions have been found necessary even in the best governed machine conventions, for revolt against the rule of the machine is sometimes to be expected and always provided against. Nothing is overlooked here. There is no haste, no confusion. In the rooms of the delegates, in the wide corridors of the hotel below, out upon the streets of the city, the excited mass may push and surge, parry and thrust, accuse and deny, hoot and cheer, but in this quiet corner all is harmonious and peaceful. And it is here that the work of the convention is being performed, here that the combinations are effected, here that the deals, and bargains, and trades, and pledges, and promises of appointment, are being made, that will settle all the business of the convention, at the appointed time.

Finally all is in readiness, the hour is at hand. The bands play. The delegations take their places under the waving banners, in the great convention hall. Thousands of spectators look down upon the scene from the lofty galleries. At last order and quiet prevails, but it is the tense quiet of suppressed excitement. The nerves are tingling, the pulses bounding. It is a powder magazine of powerfully restrained human emotions, a spark, a gesture, a word, and an explosion follows.

The nominating speeches are made. With each presentation the supporting delegates cheer and applaud and stamp and wave fans and flags in a furious demonstration of endorsement. The convention becomes a scene of wild disorder. Men of serious and dignified deportment in life clamber over seats and rush

back and forth, frantically shouting the names of their favorite candidates, until they finally cease from sheer exhaustion.

And this is a deliberative body of American citizens, engaged in the discharge of the gravest duty which can ever be committed to men, under a representative form of government! Immortal fathers who founded this republic! Let us believe that in the providence of God your eyes are veiled from this modern method of nominating candidates for the high trust of public service.

With the speech making at an end the balloting begins, but there is no lull in the storm. The announcement of the votes of each delegation is greeted with applause from time to time, rising above the confusion of the canvass carried on by the more active members of the convention as they rush their workers from one delegation to another in eager quest for votes. The result of the ballot when declared, if not final, is the occasion for a storm of cheers from the adherents of the leading candidates. Then the balloting goes forward again.

The lightness of the obligation of the delegate, to the voters he represents, now becomes manifest. Many who have withstood the blandishments and temptations of the canvass since their arrival, having recorded a vote for the choice of their constituencies, hope now to be able to do something for themselves, in the way of political preferment and rush wildly for the "loaded wagon." This is usually followed by a stampede which closes the contest and reveals the inherent weakness of a plan of representation wholly without responsibility.

The work of the convention is ended. The masters of the machine have had their way. The minority from their quiet corner in the hotel have ruled the great majority of the plain citizens of the state. The men named as candidates are the servants of the minority. They know their masters. They will serve them well. There may be anger. There may be disintegration threatened in the party. But the machine trusts to the white heat of the campaign to fuse the fragments and win

the day. It has succeeded many times and they depend on high partisan feeling, strong devotion to party principles, to carry the ticket through. What though the voters do not like the candidates, they will surely prefer them to the candidates of the other party who have been nominated by the same methods.

This then is the work of the modern caucus and convention. No candid man will dispute the facts, or claim that the portrayal too strongly presents the defects, or assert that the more debasing practices are even hinted at. And this is the practical result of a century of effort in self-government. In this land of the free, dedicated to the principles of democracy, climbing by the caucus and the convention, the machine has mounted to power in nearly every state of the Union.

It controls in making the laws. It controls in executing the laws. It prostitutes the civil service and does not spare even the charitable and penal institutions of the state. It increases the burdens of taxation upon the homes and finds an easy way to allow some corporations to go untaxed.

This is government by the caucus and convention. It is not representative government. It is not government by the people.

3. WEAKNESSES OF THE CONVENTION SYSTEM[1]

The character of its membership, the complexity of the system, the use of proxies, the manipulations of credentials, log-rolling, and bribery combine to defeat the object of the convention — the representation of the popular will.

We may first study the evils which surround the convention as a result of external corrupting influences. They vary widely with the localities. They depend upon the activity of the "machine" politician, and the delegates who are to be "worked." Three classes of delegates may be distinguished in conventions:

[1] Meyer, E. C., *Nominating Systems*. Madison, Wisconsin, 1902; p. 57, *et seq.*

the "fixed" delegates who represent the "machine-controlled" primaries, and who are found to a greater or less extent in most of the conventions held in this country; the faithful and independent delegates of a staunch and incorruptible character, who faithfully express the wishes of their constituents, and who would do so under any conditions; and between these extremes, a wavering class, which is more or less susceptible to corrupt influences. In its ranks the havoc of evil runs riot. Its presence makes the activity of the professional politician profitable beyond the confines of the primary. If he has failed at the latter another opportunity presents itself at the convention. If the "machine" lacks a sufficient number of adherents to control the nominations at which it aims, there is still a chance to win over these "workable" delegates before the convention has performed its functions.

The political worker is aided in his schemes of bribery and corruption by the complexity of the convention system. The multiplicity of offices to be filled, and the variety of their grades, including those of the town, city, county, State, and Nation, each of which requires its own particular set of conventions, has given rise to a bewildering intricacy in our nominating institutions. In some cases delegates to higher conventions are selected by delegates to lower conventions. All this intricacy, which confuses the average voter, makes proper instruction almost impossible, lessens the responsibility of the delegates, and eases the way for the professional politician who has thoroughly mastered its details, and enables him to manipulate his forces successfully.

The complexity of the system also gives rise to a second advantage for the "boss" and the ring-leader. The numerous conventions require a number of delegates so large that it is difficult to find a sufficient number of good men who are willing to act. Successful business men, or professional men, generally refuse to act because of lack of time, while capable men of leisure frequently refuse upon the ground that it is humiliating and undig-

nified to attend a convention dominated by the "machine," and there find the wishes of one's constituents entirely ignored. Hence a class of fickle politicians who spend their time in politics for what they can get out of it, are likely to find their way into the convention halls, where they constitute plastic material in the hands of the deputed convention workers of the "machine."

The custom of sending proxies is also fraught with much evil in that it removes the responsibility of the original delegate to his constituents. He may yield his seat in the convention to his proxy, to escape disagreeable business, or for one pretense or another allow him to take his place. The "machine" may by contrivances and intrigues, aid in the process, especially if the proxy is already "fixed." It is a usual subterfuge to head a delegate ticket with the name of a man of known probity, and perhaps even to fill out the list with men of this character, when it is certain that these men will not serve, and that unknown alternates or proxies, subservient to the "bosses," will sit in the convention. Thus it happens that the practice of proxyship plays right into the hands of the professional politicians.

The "machine-controlled" committee of credentials is also a source of common and glaring frauds in conventions. It is a means by which the first class of delegates, the staunch and true and "unworkable" representatives of the people, are prevented from taking their seats in the convention upon one pretense or another, while the "machine" proxies are put in their places.

Similar grave results may proceed from the practice of instruction for second choice, for it also presents the opportunity of dropping the candidate of first choice upon one plea or another, if "trading" or "logrolling" accompanied by personal advantage should make this expedient. Every practice of this kind which increases the freedom of the delegates, weakens the force of their instructions, and increases the possibility of "machine" control.

Since considerable time usually elapses between the selection of the delegates and the assembly of the convention, the chances

to defeat the wishes of the people are only too ample. The pressure that is brought to bear upon delegates through personal influences, political prestige, use of money, threat, and cunning duplicity, is tremendous and well-nigh irresistible, unless indeed the heart and mind are firmly fixed beforehand. . .

The wavering delegate who hesitates to yield himself to these personal considerations, is strengthened in his wrongful tendencies, as already suggested, by the fact of indefinite or uncertain instructions, or their total absence. Even though the voter knew in each particular instance just what candidate he wished to vote for, and what delegate he must support to do so, he would still be involved in perplexities occasioned by the multitude of offices to be filled in some cases by each convention. He might be able to make up a ticket of delegates who would all be favorable to any one of the candidates he desires to see nominated, but such is the variety of opinions that he would find it impossible to name a list of delegates who would be unanimously favorable to his choice for every one of a number of offices. To this must be added the almost boundless confusion which would result should he endeavor to instruct each delegate as to first and second choice. Hence it would be quite impossible for him to charge each delegate with definite instructions as to each candidate to be nominated. Only very general instructions proceeding on a party basis are possible. . .

These inherent weaknesses of the convention system have been the cause of its decline. Under the influences of the many corrupting forces which ever play in politics, it has gradually degenerated. Its representative structure has been broken down, and upon its ruins there has been reared a new and despotic institution dominated by an unscrupulous "machine" that has forced its way into party leadership, and falsely presumes to act in the interests of its members.

4. NONPARTISAN MUNICIPAL PRIMARY ELECTIONS[1]

Municipal elections should turn on local issues. To bring this about, many states have adopted for their cities schemes of elections intended to remove the national parties from the choice of local officials. The following is an example.

Sec. 5. Candidates to be voted for at all general municipal elections at which a mayor and four councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Monday preceding the general municipal election. The judges of election appointed for the general municipal election shall be the judges of the primary election, and it shall be held at the same place, so far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

Any person desiring to become a candidate for mayor or councilman shall, at least ten days prior to said primary election, file with the said clerk a statement of such candidacy, in substantially the following form.

State of Iowa, ... County, — ss.

I (. . . . . .) being first duly sworn, say that I reside at . . . . . street, city of . . . . . county of ———— State of Iowa; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held in the . . . . . Monday of . . . . . 19 . . and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) . . . . . .

Subscribed and sworn to (or affirmed) before me by . . . . . on this . . . . . day of . . . . . 19 . .

(Signed).

[1] *Laws of Iowa*, Chap. 48; 1907 (excerpt).

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to the qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

PETITION ACCOMPANYING NOMINATION STATEMENT

The undersigned, duly qualified electors of the city of . . . . . ., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the . . . . . Monday of . . . . . ., 19 . . . . . We further state that we know him to be a qualified elector of said city and a man of good moral character and qualified in our judgment for the duties of such office.

Names of Qualified Electors	Number	Streets

Immediately upon the expiration of the time of filing the statements and petitions for candidacies, the said city clerk shall cause to be published for three successive days in all the daily newspapers in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immedi-

ately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name and below the names of such candidates shall appear the words, "Vote for four." The ballots shall be printed upon plain, substantial white paper, and shall be headed:

CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCILMEN OF . . . . . CITY AT THE PRIMARY ELECTION

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions.)

OFFICIAL PRIMARY BALLOT
CANDIDATE FOR NOMINATION FOR MAYOR AND COUNCILMEN OF . . . . CITY AT THE PRIMARY ELECTION

For Mayor
☐ (Name of Candidate.)
(Vote for one.)

For Councilman
☐ (Name of Candidate.)
(Vote for four.)

Official ballot attest:
(Signature)

. . . . . .
City Clerk.

Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor. The

persons who are qualified to vote at the general municipal election shall be qualified to vote at such primary election, and challenges can be made by not more than two persons, to be appointed at the time of opening the polls by the judges of election; and the law applicable to challenges at a general municipal election shall be applicable to challenges made at such primary election. Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city clerk, upon proper blanks to be furnished by the said clerk, within six hours of the closing of the polls. On the day following the said primary election the said city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers of said city at least once, the result thereof. Said canvass by the city clerk shall be publicly made. The two candidates receiving the highest number of votes for mayor shall be the candidates and the only candidates whose names shall be placed upon the ballot for mayor at the next succeeding general municipal election, and the eight candidates receiving the highest number of votes for councilman, or all such candidates if less than eight, shall be the candidates and the only candidates whose names shall be placed upon the ballot for councilman at such municipal election.

All electors of cities under this act who by the laws governing cities of the first class and cities acting under special charter would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable, and in all elections in such city the election precincts, voting places, methods of conducting election, canvassing the votes and announcing the results, shall be the same as by law provided for election of officers in such cities, so far as the same are applicable and not inconsistent with the provisions of this act.

5. LEGISLATION NEEDED TO SUPPLEMENT PRIMARY ELECTION LAWS [1]

Though the Primary Election System has made rapid strides in replacing the convention, there are still many points upon which even its best friends are disappointed in its working. Some of the improvements most often urged are here discussed.

There can be little doubt that the direct primary system will continue to progress, supplanting the convention method, until ultimately it covers the whole group of states. The direct primary system promises popular control of the nominating machinery, and the overthrow and expulsion of the party boss. It promises to drive out oligarchy or autocracy, and to introduce democracy into the party system. Upon this promise a desperate political constituency relies. Whether all the results depicted by the advocates of the system will actually follow, there may be serious doubt. But its chief opponents have been men who failed to take a broad view of the political field, and their motives and their arguments have not been taken seriously by the people. Their fear that party organization might be destroyed has been construed as apprehension that certain holders of power might be displaced under the new system. Monstrous abuses have arisen under the convention system and whether or not the direct primary can perform all that its advocates promise, there can be little question that the people of the United States are disposed to give it a fair trial and will undertake the experiment without much further delay.

A more serious problem is presented by the relation between the direct primary and the system of nomination by petition only. In elections where it is desirable to separate as far as possible national and local issues, there are reasons why the direct primary may not be the most practicable system. No matter

[1] Merriam, C. E., *Primary Elections*. University of Chicago Press, 1908; pp. 163–176.

what the nominating system may be, if it is a party system, partisan politics are thrust upon the electorate and argument upon national issues is almost inevitable. Party primaries and nonpartisan elections do not harmonize, and are, in fact, mutually exclusive. The direct primary seems, therefore, to emphasize the national party in local politics and the continuance of the well-known evils that have heretofore accompanied that system in our American cities.

This was well stated by Mr. Walter Fisher when he declared, in an address before the Chicago Charter Convention in 1907:

> You cannot, by any possibility, successfully operate a party which is organized on national and state lines, and fit that party to a municipal election. It never has been done, and it never will be done. The lines of cleavage of the different parties are different. The lines upon which they are agreed in national and state elections are not the lines governing the municipal election.

Nomination by petition only would render party choices, as such, impossible. It would be possible, however, for a party to hold an informal convention, nominate its candidates, and place them upon the ballot by the petition process. But the party circle, column, and designation would no longer appear upon the ballot. The nominees could have only such advantages as the prestige of choice by party leaders might carry with it, and allegiance of the mass of the party voters would not be so confidently demanded or so easily secured.

On the other hand, the legal protection of the nominating process would be totally destroyed, and, if nominations actually were made by parties, there would be no legal guaranty of an orderly process. If it should turn out that nominations were actually made by a party boss, the net result would be the destruction of the safeguards that have been built up by forty years of primary legislation. So far as cities are concerned, then, the question involved is whether the greater advantage lies with the direct primary or with the elimination of legally regulated party nominations.

A primary law should always leave the city the right to choose either the direct nominating system or nomination by petition, and if the latter is adopted the plan of permitting a preliminary election for the purpose of choosing two candidates for each office is worthy of careful trial. In the choice of educational and judicial officers, nomination by petition only presents possibilities worthy of very serious consideration, and in the case of school officers is already in use in several places.

A study of primary election legislation shows that the desired results cannot be obtained until other and important political changes have been made. Unless primary laws are accompanied or followed by other developments of the political situation, comparatively little will result from the movement. No friend of direct nomination should indulge the pleasant dream that the adoption of a law providing for such a system will, of itself, act as a cure for all the present-day party evils. Disillusionment and discouragement are certain to follow in the wake of any campaign conducted on such a theory. It is necessary to understand that the political conditions are far too serious and far too complicated to be cured by so simple a specific.

In the first place, it is not likely that the direct nominating system will achieve its full results until the number of elective officers is materially reduced. Where thirty or forty offices are to be filled at one primary, it is not probable that an intelligent choice will be made from the great number of candidates presented. The variety of qualifications required for the several offices, the multiplicity of candidates clamoring for recognition, the obscurity of many of these candidates, the possibility of "deals" and "slates," make the likelihood of proper selection somewhat remote. It is not probable that the result will be any worse than that obtained under the convention system, but, on the other hand, it is not likely to be very much better in the case of the minor offices.

The reduction of the number of elective offices is not undemocratic, as might perhaps be charged, but is, on the contrary, cal-

culated to give the people more complete control over their own government. To provide for popular choice of a large number of officers does not increase, but, quite the contrary, diminishes their power. As was said in the *Federalist:*

> The countenance of the government may become more democratic; but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed.

A great array of elective public offices means control by the few rather than by the many. Amenability to popular control will be better secured by reducing the number of offices, so that the requirements of the candidates for each such position may be carefully scrutinized, and the most intelligent choice be made.

This simplification of the machinery of government may most easily be made by eliminating administrative offices from the elective list. There can be no good reason why such officers as auditor, engineer, and surveyor, should be elective. An auditor must be accurate and honest, and there is no such thing as Republican auditing or Democratic auditing. Nor is there a Republican way, or a Democratic way, or a Prohibitionist way of administering the office of engineer. Certainly there can be no form of surveying that could be characterized as Socialistic or Democratic or Republican.

The true principle is that the people should choose all officers concerned with the formulation of public policies. They need not choose men engaged in the carrying out of policies. Policy-framing or legislation is a matter upon which there may be differences of opinion, and men intrusted with the work of drawing up such plans must be elected by, and be immediately responsible to, the people. Regarding the execution of policies once enacted into law, there is less room for difference of opinion. The making of law is partisan, but the enforcement of law should be non-partisan. Laws should not be administered in a partisan way, but efficiently and justly. Administration requires tech-

nical skill, and partisanship is destructive to its best development.

If any administrative offices are to be selected by popular vote, the number should be confined to the chief executive officers, such as the mayor and the governor. If these officers are chosen by the people and given the duty of selecting and supervising other public servants on the administrative staff, the result is certain to be a higher degree of popular control than is now generally secured. This principle has been established in the federal government from the beginning, is now being adopted in our municipal governments, and few new elective offices are being provided in state and county government. We are coming to realize that what is needed is popular control over policies, with non-partisan, skilled, and permanent administration of these policies. While in London in 1907, I was greatly interested to see that, although the Moderate party in the London County Council had just won a sweeping victory, which placed it in power for the first time in sixteen years, no changes were made in the administration. The offices and committees of the Council were reorganized to give the victorious party the majority necessary to execute its policies, but the public servants whose duty it is to execute the policy of the Council remained undisturbed.

Such a change may be denounced as undemocratic in spirit and tendency, but on second thought it will be seen that instead of weakening popular control over government the result will be to strengthen that control. A system that imposes upon the electorate the choice of a mass of officials strengthens the hands of partisan or private interests at the expense of the public. With a smaller number of elective officers, the results obtained under the direct primary system would be far more satisfactory than they can be under existing conditions. Public attention could be focused upon a few offices and a few candidates with better prospects than at present for the elimination of the undesirable and the survival of the fittest. Until this is brought

about, the success of the direct nominating system must be seriously menaced.

Another essential change is the return to the original form of the Australian ballot. The party emblem, the party circle, and the party column have nothing to do with the Australian ballot, and were engrafted on the system by American legislatures. In adopting the system, secrecy of the ballot was secured, but the party obtained the advantage of arranging party candidates in columns and permitting the voter to select a list of candidates by marking in the party circle. This mechanical arrangement places a premium upon undiscriminating voting, and often results in the election of unworthy and unfit candidates by sheer advantage of position upon the ballot. If the head of the ticket is elected, the others are likely to be carried along with the leader, regardless of their own merits. Fortunately this plan has not been applied to the conduct of nominating elections, where voting an organization slate with one mark might have worked great damage; but the fact that this practice prevails in the regular elections throws its shadow back over the primaries. The knowledge that candidates, when nominated, will be placed under the protection of the emblem or the circle makes the party, especially in districts where it is strongly in the majority, less careful in its choice of candidates than would otherwise be the case. It is only human nature to be less studious of the public wishes in a situation where a nomination is equivalent to an election, and where defeat even of the unworthy is a remote possibility. Ballot reform is, therefore, a necessary accompaniment of primary reform. The ballot in the regular election should be made up in the same form as the ballot in the primary election, with the party designation placed after the name of the candidate.

Another requisite to the complete success of the direct nominating plan is the further extension and enforcement of the merit system. As long as an army of officials can be thrown into the field in support of a particular "slate," it will be difficult for the candidate, not so supported, to succeed. The odds are too

greatly in favor of the regular army against the unorganized and undisciplined volunteers. Occasionally victory may perch on the banners of the straggling group of reformers and "antis," but habitually will rest upon the side of the well-disciplined army of office-holders. The honest and intelligent application of the merit principle to administrative appointments reduces the number of workers under the control of a faction, and makes the support of the "slate" far less formidable. If the group in power centers around some principle or policy, it will continue to be powerful and effective in the primaries, even under the merit system; but if the chief element of cohesion was public office, it will be far less vigorous than before. Patronage is not only the force that holds an organization together, but it is the strongest single element, and no practical politician is ever guilty of despising the power of appointing men to, and removing them from, office. There are, of course, many exceptions, but the general practice is for the appointing power to control the political activity of the appointee. When the office is obtained by merit, however, and not by favor, this sense of obligation on the part of the officer and of power on the part of the party ruler ceases. Hence the mobilization of an army for effective use in a primary campaign becomes far more difficult, and the opportunities for success on the part of the opposition correspondingly greater. To the extent that the merit system is not rigidly carried out, the effects, just indicated, do not follow. In any event, it is not to be presumed that civil service reform is a panacea. It is merely a palliative. It will materially help, but cannot be relied upon to accomplish a complete cure for our political ills. The merit system merely abolishes the feudal tenure under which many officers now hold, and the obligations of service incident to that relationship. It will remove one handicap to an even race between candidates for a nomination.

It is a serious question whether public appropriation should not be made to defray a part of the expenses of candidates in primaries. Already in most states all of the cost of the primary

election itself is paid from the public treasury. The payment of election judges, the printing and distribution of ballots and booths, the rent of polling-places, and other similar expenditures incident to holding a primary are usually met from the public funds, although at the outset all such charges were covered by party assessments upon candidates. The government might also undertake to place in the hands of every voter in the given district a brief statement regarding the record and platform of each candidate. Such statements, prepared by the candidates' friends, or critics, might be bound together and sent to every member of the party in the constituency interested. The expense would not be great, while the educational value to the public would warrant an appropriation for the purpose. At any rate, the government might defray the cost of distributing such material. It might also be possible to allow candidates the use of certain public buildings, such as schoolhouses, or perhaps to secure other meeting-places and permit their use by the several contestants. There is serious danger that under the present system the man without large means may find it almost impossible to enter the primary lists, or that he may incur obligations of a character that may interfere with his usefulness to the public. The candidate should not be subjected to the temptation of mortgaging his future political conduct for the sake of securing the necessary campaign fund.

After all such remedies have been considered, it is clear that no readjustment of the political machinery can be relied upon to produce ideal political conditions. It is a common American fallacy to conclude that when a constitutional amendment, or a statute, or a charter, is secured the victory has been won and that the patriotic citizen may go back to the neglected plow. It is easier to secure ten men to fight desperately for good legislation than one who will fight steadily and consistently for efficient administration. Every student of politics knows, however, that there is no automatic device that will secure smoothly running self-government while the people sleep. Perpetual mo-

tion and automatic democracy are equally visionary and impossible. The governor gauges the pressure of public interest and regulates his conduct accordingly. The level of politics is in the long run the level of public interest in men and affairs political. Under any system the largest group of interested and active citizens will determine public policies, and will select the persons to formulate and administer them. The uninterested, or the spasmodically interested, the inactive and the irregularly active, will be the governed, not the governors.

Neither primary legislation nor any other type of legislation can change this situation. We may make it easier for the people to express their will; we may simplify the government and render it more clearly and directly responsible, but this alone will not insure the desired result. We may remove obstructions and hindrances and facilitate popular control, but we cannot do more.

The direct primary system is, therefore, to be regarded as an opportunity, not as a result. It signifies the opening of a broad avenue of approach to democracy in party affairs, but not the attainment of the goal.

IV. The National Convention and the Election of the President

1. The Composition of the National Convention [1]

The most spectacular feature of our party life is undoubtedly the campaign for the election of the President. Its coming is looked forward to by all classes of our people, for upon its outcome depends not only who shall be our national executive, but to a great extent what shall be our national policy for the next four years. Who form the national convention which is to nominate the party candidate for President, where they are to meet, and how they act, become therefore questions of unusual popular interest.

As the first act in the campaign the chairman of the National Committee of his party, calls the Committee to meet for the purpose of appointing a time and place for holding the National Convention.

The National Committee will usually meet in Washington, D.C. Washington is the political capital of the country, the political headquarters, especially while Congress is in session. Many members of the National Committee are members of Congress, and the national capital is, therefore, the most convenient place for the Committee to meet. The Democratic Committee usually meets on the 22d of February of a presidential year, the Republican Committee in January or December. While the Republicans have no fixed time for the meeting of their Committee, custom has made it at least six months before the date to be set for the convention. The chief purpose of this meeting is to issue the *call* for the National Nominating Convention. . .

[1] Woodburn, J. A., *Political Parties and Party Problems in the United States.* Putnams, New York, 1906; pp. 152–162.

A matter of temporary importance, and the one which excites the greatest public interest and attention at this meeting of the Committee, is the choice of a convention city. Delegations from rival cities appear before the Committee. In the early years of the century Baltimore had the distinction of being known as the 'Convention City.' It was easy of access, halfway between the North and the South, and it was supposed not to be decisively permeated with either Northern or Southern influence. In later years Chicago has more frequently than any other city entertained the National Conventions. In its location and from its railroad facilities Chicago is more easily and fairly accessible from all parts of the country. The size of the city, its large auditoriums, and its hotel accommodations enable it to entertain the immense crowds of delegates and visitors that assemble at these quadrennial conventions. It is quite desirable, if not almost essential, that the convention city should be a city of the first class, affording these conveniences and facilities. But it is not always from these considerations that the National Committee chooses the place for the Convention. It may be deemed good politics, as a means of influencing the political opinion of a community, to have the Convention meet in a particular section of the country; it may be claimed that to choose Indianapolis would be to secure for the party the electoral vote of Indiana, or to choose Kansas City would make sure of the votes of Kansas and Nebraska. It is not evident that the Convention carries with it such influence in the election. The friends of a particular candidate in control of the Committee may deem it inadvisable in the interest of their candidate to have the Convention held, for instance, in New York, or Philadelphia, where, presumably, the influence locally of the press and party would be adverse; and, again, a responsible commercial delegation from a city may offer to the Committee a money donation to the campaign fund of the party, and offer to pay all the expenses of the Convention in exchange for the choice of their city. A committee of fifty or sixty business men from a city seeking the

Convention make a trip to Washington, and these, combined with the Senators and Representatives of that section of the country, importune the National Committee and present the 'claims' of their city. This is generally done to bring visitors and money to the city, and the effort to 'land' the Convention is made by local business men and hotel interests regardless of politics. In 1900, Philadelphia promised to the Republican National Committee a donation of $100,000 to bring the Convention to that city, and Kansas City offered $50,000 and the expenses of the Convention to the Democratic Committee. The money offer is often a decisive factor in the choice of the Committee. . .

The number of delegates from the States to the National Convention is as follows: *Four delegates-at-large* from each state, — that is, double the number of United States Senators to which the State is entitled. If the State has a Congressman-at-large in the Lower House, two more delegates-at-large are added. *Two delegates are allotted to each congressional district* of the State. Thus each State has twice as many delegates as it has Senators and Representatives in Congress, or twice as many as its electoral vote. Delaware has three electoral votes, one for each of its Senators and one for its Representative in Congress. New York has thirty-six electoral votes, two for its Senators and thirty-four for its Representatives. In the National Conventions Delaware has six delegates and New York seventy-two. Before 1852 the numbers in the National Conventions were the same as in the Electoral College, one delegate for each elector. For twenty years after 1852, in the Democratic Convention, the numbers were increased to two delegates for each elector, but each delegate had only half a vote. In 1872 the Democratic Convention gave each delegate a whole vote, while the number of delegates remained double that of the electors. The Republicans adopted this rule of membership in 1860, and it has been the rule of both parties since 1872. In addition to the State delegates, two delegates have usually been

allotted to each of the Territories. This helps to develop party feeling and party strength in the Territories in anticipation of their coming into the Union as States. In the Democratic Convention of 1896, in accordance with a report of the Committee on Credentials, the Territorial representation was increased from two to six delegates for each Territory, and the official call of the National Republican Committee in 1900 recommended a similar increase from the Territories for that party. In the Republican Convention the Territorial delegates vote as other delegates, but in the Democratic Convention the Territorial delegates have no votes, — a fact which again indicates the disposition of the Democratic party to govern, or to choose its rulers and its candidates, by the action of States. The Republican Committee in its call recommended that the Territories of Arizona, Indian Territory, New Mexico, and Oklahoma (prospective States), each elect six delegates and that Alaska elect four delegates, leaving the District of Columbia still only two, and the admission of these additional delegates was recommended to the Convention. The Convention of 1900 acted on the recommendation and admitted six delegates each from Arizona, New Mexico, Oklahoma, and Indian Territory, and two each from Alaska, District of Columbia, and Hawaii. With this increase the National Republican Convention consists of 894 State delegates (twice 447, the vote of the Electoral College) and thirty Territorial delegates, making a Convention membership of 924 in all. In addition to the delegates an equal number of alternates are elected to act in case of the absence of the delegates. The alternates are elected at the same time and in the same manner as the delegates; they sit in the Convention immediately behind the delegates. . .

The district plan of electing the delegates is comparatively recent. Formerly, in both parties, the delegates for the whole State were appointed by the general State convention, and in some parts of the country, especially in New York and the Eastern States, this is still the custom in the Democratic party.

State appointment recognizes the delegation as representing the State, and it gives greater power and prestige to the State as such, enables it to act as a unit, and this may account for the greater favor with which it has met in the Democratic party, as that is the party which tends more to advocate and defend the powers and rights of the States. But it is less popular than the district plan. It enables a shrewd politician in control of the party machinery of his State, and who is thereby able to manipulate the State convention of his party, to gain larger influence and power. A 'snap judgment' may be more easily taken as against the wishes of the masses of the party. These have a better chance to exert their influence in smaller district conventions.

The delegates to the National Conventions are usually active party men, politicians in their respective districts who give a good deal of time and attention to politics. They are frequently able and astute managers, not office-seekers always, though often so, but men whose services to the party entitle them to some distinction and recognition. The delegates-at-large are usually men of State or national reputation, the party leaders of the State, the United States Senators, or men whose renown or power as speakers and managers will give the delegation weight and influence in the Convention.

Of recent years much criticism has arisen on account of the presence in the National Convention of the party of the Administration, of Federal office-holders. It is alleged that these Federal officers exercise an undue influence in controlling political action and in thus retaining in power their party chieftain, the dispenser of their salaries and patronage. . .

The question has been raised in late years, and it is especially urged upon the Republican organization, whether representation in a National Convention ought not to be in proportion to party strength within a State. At present the States are represented in the National Convention as they are represented in the National Congress, — in proportion to population. In a Republi-

can National Convention a hopelessly Democratic State has the same voting strength as a safe Republican State of the same population. Georgia casts the same vote in nominating the Republican candidates as Iowa, though Iowa is quite sure to contribute to the election of the party candidate and Georgia is equally sure not to do so. The Republicans of Iowa cast, in 1900, 307,000 votes, while the Republicans of Georgia cast only 35,000 votes. For the party candidate in 1900 the Republicans of Ohio cast 543,000 votes, while the Republicans of South Carolina, Mississippi, and Louisiana together cast 23,565 votes. In a National Republican Convention, Ohio Republicans may cast only forty-six votes, while the Republicans from these three Southern States may cast fifty-two. Why should not the voters of the party who are to be relied upon to elect the candidate be allowed to determine the party candidate and the party policy? Or, why should they not have weight in doing this in proportion to their party numbers, in proportion to the votes which they cast for the party candidates? Party conventions within the States recognize the democratic representative principle. The different counties of the State are represented in the State conventions of the party in proportion to party numbers. Party vote in the counties, not population, is everywhere recognized as the true basis of representation. A county is allotted one delegate, say, for every two hundred votes (or major fraction thereof) cast for the party candidate at the head of the ticket at the last preceding election. No one questions the fairness of this representation. The late Populist party, with no traditions to bind it, recognized the new popular basis of representation in National Conventions. It allowed that each State should appoint two delegates-at-large, and then one for every two thousand votes cast in the State for the Populist electors in 1892. Thus in the Populist Convention of 1896, Texas, entitled in the old party conventions to thirty votes, had one hundred and three votes, while New York had but thirty-six votes. Kansas had ninety-two

votes, Connecticut but six. From States where the Populist party was strong the delegation was large. This would tend to secure a nomination and a platform not by States but by the mass of the voters of the party. By this plan the party, not the States, makes the platform and the candidates.

2. THE CALL OF A NATIONAL CONVENTION[1]

The official call of the National Convention is the first big gun fired in the party campaign. It is the signal to all the candidates who have been nursing their chances to become the party's candidate that at last the real struggle within the party is coming to a head.

To the Republican Electors of the United States:

In accordance with established custom and in obedience to instructions of the Republican National Convention of 1904, the Republican National Committee now directs that a National Convention of delegates representative of the Republican party be held in the city of Chicago, in the State of Illinois, at 12 o'clock noon, on Tuesday, the 16th day of June, 1908, for the purpose of nominating candidates for President and Vice-President, to be voted for at the Presidential election, Tuesday, November 3, 1908, and for the transaction of such other business as may properly come before it.

The Republican electors of the several states and Territories including Hawaii, the District of Columbia, Alaska, Porto Rico and the Philippine Islands, and all other electors, without regard to past political affiliation, who believe in the principles of the Republican party and indorse its policies, are cordially invited to unite under this call in the selection of delegates to said convention.

Said National Convention shall consist of four delegates-at-

[1] *Official Call*, by the Republican Committee, 1908.

large from each State, two delegates for each Representative-at-large in the Congress, two delegates from each Congressional district and from each of the Territories of Arizona, New Mexico and Hawaii, two delegates from the District of Columbia, and two delegates from each, Alaska, Porto Rico and the Philippine Islands. For each delegate elected to this convention an alternate delegate shall be chosen to serve in case of the absence of his principal.

The delegates-at-large and their alternates shall be elected by popular State and Territorial conventions, of which at least thirty days' notice shall have been published in some newspaper or newspapers of general circulation in the respective State or Territory.

The Congressional district delegates shall be elected by convention called by the Republican Congressional committee of each district, of which at least thirty days' notice shall have been published in some newspaper or newspapers of general circulation in the district; provided, that in any Congressional district where there is no Republican Congressional committee, the Republican State Committee shall be substituted for and represent the Congressional Committee in issuing said call and making said publication; and provided, that delegates both from the State at large and their alternates may be elected in conformity with the laws of the State in which the election occurs; provided, the State Committee or any such Congressional committee so direct; but, provided further, that in no State shall an election be so held as to prevent the delegates from any Congressional district and their alternates being selected by the Republican electors of that district.

The election of delegates from the District of Columbia shall be held under the direction and supervision of an election board composed of Sidney Bieber, Percy Cranford and George F. Collins of the District of Columbia. This board shall have authority to fix the date of said election, subject to prior provisions herein, and to arrange all details incidental thereto, and shall provide

for a registration of the votes cast, such registration to include the name and residence of each voter.

The delegates from the Territories of Arizona, New Mexico, Hawaii and from Alaska shall be selected in the manner of selecting delegates at large from the States as provided herein.

The delegates from Porto Rico and the Philippine Islands shall be elected in conformity with certain rules and regulations adopted by this committee, copies of which are to be furnished to the governing committees of the Republican party in Porto Rico and the Philippine Islands.

All delegates shall be elected not earlier than thirty days after the date of this call and not later than thirty days before the date of the meeting of the next Republican National Convention.

The credentials of each delegate and alternate must be forwarded to the secretary of the Republican National Committee at Washington, D.C., at least twenty days before the date fixed for the meeting of the convention, for use in making up its temporary roll.

In any case where more than the authorized number of delegates from any State, Territory or delegate district are reported to the secretary of the National Committee, a contest shall be deemed to exist, and the secretary shall notify the several delegates so reported, and shall submit all such credentials and claims to the whole committee for decision as to which delegates reported shall be placed on the temporary roll of the convention.

All notices of contest shall be submitted in writing, accompanied by a printed statement setting forth the grounds of contest, which must be filed with the secretary of the committee twenty days prior to the meeting of the National Convention.

3. THE WORK OF THE NATIONAL CONVENTION [1]

No large concourse of men such as that which gathers at a national convention can act without organization. Fairness between the factions, too, can be secured only if all know the procedure and have an equal opportunity under it. How the convention is organized and what work it does is shown by the following discussion.

American politics does not offer the student and observer a more interesting and exciting spectacle than may be witnessed in the National Conventions. They have been the scenes of many dramatic and historic events, and their proceedings are well worthy of the student and the historian of politics. . .

The preliminary arrangements for the Convention are entrusted to an executive committee of the National Committee. This committee of arrangements elects a sergeant-at-arms of the Convention, and to him is entrusted the duty of superintending the printing of tickets, the organization of a force to act as assistants, ushers, and pages to seat the people and to maintain order during the sessions of the Convention.

The National Convention is called to order by the Chairman of the National Committee. The proceedings are opened with prayer. The National Chairman then asks the Secretary of the Committee to read the call of the National Committee by which the assembly is convened. The Committee Chairman then immediately announces to the Convention the name of the temporary presiding officer, previously chosen by the National Committee. This nomination is usually accepted by the Convention without contest or division. If there is opposition, however, any delegate is entitled to place another name before the Convention and call for a vote; or some one may do so as the representative of the minority of the National Committee. . .

[1] Woodburn, J. P., *Political Parties and Party Problems in the United States.* Putnams, New York, 1906; pp. 176–196.

After the temporary chairman is selected he addresses the Convention in a formal speech on public measures and on the political situation. Following his speech other prominent men are likely to be called out for brief speeches. These calls are informal and are not a part of the regular order of procedure. The chairman then announces that until a permanent organization is effected the Convention will be governed by the rules of the preceding Convention. After the speeches of the temporary chairman and others, some delegate may offer a resolution like the following:

"*Resolved*, That the roll-call of States and Territories be now called and that the chairman of each delegation announce the names of the persons selected to serve on the several committees as follows:

"Permanent Organization.

"Rules and Order of Business.

"Credentials.

"Resolutions."

These committees, on a roll-call of States, are then named, not by the Chairman, but by the respective State delegations, one member from each State and Territory going on each committee. With the appointment of these committees the first session of the Convention is at an end.

During the recess of the Convention the committees are at work. The Committee on Credentials is hearing the evidence and pleas in the cases of contested seats, for this committee must report, at the next session if possible, as to what delegates are entitled to sit and vote in the Convention. Few conventions meet in which difficult contests do not come up for decision, — cases in which "politics" and sharp practice play important parts. The Committee on Resolutions has long and late sessions, perfecting the platform to be reported to the Convention. The Committee on Permanent Organization must report a list of permanent officers for the Convention, and the Committee on Rules a set of rules to guide the assembly.

At the second session of the Convention the first business in regular order is the report of the Committee on Credentials. If this committee is not ready to report it will probably ask for leave to sit continuously until it completes its labors. The Convention cannot proceed with its business until it is decided who has a right to take part in its proceedings, and after the permanent organization is effected the Convention may have to adjourn from time to time to await the conclusion of the Credentials Committee. But the delay of this committee in reporting does not postpone the permanent organization. This may be effected under the presidency of the temporary chairman, with the understanding that those may vote on questions relating to permanent organization who hold the certificates of membership in the Convention issued by the Secretary of the National Committee. Whether some of these are subsequently displaced by the report of the Credentials Committee may be determined later, but it must, however, be before the more important business of the Convention is transacted. If it be found necessary to grant the Credentials Committee more time the temporary chairman calls for the report of the Committee on Permanent Organization. This committee reports the name of a permanent chairman, a corps of secretaries, and a list of vice-presidents, one from each State. If these nominations are accepted by the Convention the permanent chairman is escorted to the platform and, on taking the chair, he also makes a speech to the Convention, congratulating the party, urging harmony and wisdom in the party councils, reviewing and defining the issues, in brief, sounding a keynote for the approaching campaign. If, however, the Committee on Credentials be ready to report before the permanent organization is effected, the Convention proceeds to act upon the report to determine its own membership. The Convention usually accepts the majority report of its Committee on Credentials, but sometimes it substitutes a minority report instead. Sometimes, as between contesting delegations from a State, the Convention decides to seat both delegations, giving each delegate a half vote. . .

Having been permanently organized and having fixed the membership of the Convention, the assembly then proceeds to consider the 'platform' reported by the Committee on Resolutions. The platform is an address to the people, consisting sometimes of various 'planks,' or a series of resolutions, sometimes of an address without division into numbered sections, containing the principles and program of the party. It arraigns the opposing party for its errors, criticises it for its course, joins issue with it on prominent policies before the public, and gives promise as to what the party will do if it is elected to or retained in power. In the platform the managers usually try to conciliate every section of conflicting party opinion, and they frequently produce a document which treats with 'prudent ambiguity' the questions on which there is division within the party.

The platform came along with the Convention system. The Democratic declarations of 1840 may be said to be the first that involved the three essential factors of a modern platform, — a statement of fundamental party principles, policies to be pursued under the pending circumstances, and pledges that these principles and policies will be carried out. Before this there were addresses adopted at public meetings, resolutions approved by ratification meetings, criticisms or defences of the Administration published by party leaders, which were generally accepted as the basis of party action; but these were not platforms in our modern sense. In a general way only, not in the modern party sense, as an expression adopted by elected representatives of the party, may the Virginia and Kentucky Resolutions of 1798 be called the platform upon which Jefferson and his party appealed to the country in opposition to the Federalist Administration of that day.

The National Conventions of the two parties are very similar to one another. But there are a few differences that are important, differences which are regarded as 'fundamental and as revealing the underlying tendencies and principles of the two parties. These differences may be summed up in what are

known as the two-thirds rule and the unit rule.' The two-thirds rule provides that no candidate shall be declared nominated unless he shall have received two thirds of all the votes cast. This rule prevails only in the Democratic Convention. The two-thirds rule was adopted by the first Democratic Convention of 1832, a Convention called by the supporters of President Jackson for the purpose of nominating a candidate for the vice-presidency. It was used in 1836, but not in 1840, and it was revived in 1844 in order to defeat the nomination of Van Buren, and it has since been used by the Democratic party.

There is a connection between the two-thirds rule and the unit rule. If the two-thirds rule be abrogated while the unit rule prevails, a few of the large States, though their delegations may be nearly evenly divided, may, by enforcing the unit rule, secure a majority of the Convention for a candidate whom only a minority of the delegates really favor. The two-thirds rule lessens the probability of this. These two rules have, therefore, been called 'two parts of a single system, and that system the casting of State votes as a unit.'

The unit rule 'is one which allows (but does not compel) the majority of a State delegation to cast the entire vote of a State.' The whole vote of the State must be cast as the majority of the delegation decide. Like the two-thirds rule, this applies only in the Democratic Convention. The Republicans do not use it. It is a rule that has been made by the practice of the State delegations, and the National Democratic Convention has never seen fit to interfere with this method of casting the State ballot. The National Convention merely permits this manner of voting.

The rule approved by the Democratic Convention of 1860 asserted:

"That in any state which has not provided or directed by its State convention how its vote may be given, the Convention will recognize the right of each delegate to cast his individual vote." If the State has instructed or requested the delegation to vote as a unit, the Convention rules that it must do so, and

the majority should decide. The authority of the State convention is recognized. The State delegation may decide to vote as a unit, but this may not be enforced by the Convention. But, if the State convention has so directed, the rule is enforced. "This recognizes the State convention as supreme; its instructions must be followed. If no instructions are given, the National Convention assumes authority and allows each individual delegate to cast his own vote."

In 1872, it was decided that in voting for candidates for President and Vice-President "the chairman of each delegation shall rise in his place and name how the delegation votes, and his statement shall be considered the vote of such State." This left to the Convention no means of discovering whether a delegation which votes as a unit is doing so under State instruction, or whether the majority, in the absence of instruction, may not be forcing a unit vote through its control of the chairman. Until 1896, the statements of the chairman have been more or less arbitrarily received and all objections have been ruled out of order, and that, too, on all questions on which a State vote has been called for.

There was resistance to the unit rule in 1884, in order to defeat Mr. Cleveland by preventing the whole vote of New York from being cast for him. It was held that if "unit instructions were ever advisable it would be when they were made with reference to a specific policy or a particular candidate. It was the practice of broadly instructing delegations to vote as a unit *on all questions* as the majority dictated, which was especially objectionable." But to sustain the unit rule it was urged that it was the right of the State to say how its will should be expressed. "To deny the States this right is to strike a blow at their sovereignty. The Republican party may stand for centralized power, but the Democratic party should stand for the rights of the States." The rule thus attacked out of hostility to Mr. Cleveland was sustained by a large vote in the Convention. . .

The *unit rule* had no particular time for its origin. It is a growth in practice. Republican Conventions allow each individual delegate to cast his vote as he chooses. The Democratic custom as to the unit rule has never been introduced into the Republican Conventions. . .

One Convention defers to the State as a final authority; it recognizes an authority higher than itself. The other overrules the authority of the state; it stands as a national body and does not recognize an authority higher than itself. This is the difference between States' rights and Nationalism. The Democratic custom is a survival of one of the old traditions of the party, — a protest against centralization. The Republican custom comes from a disposition to make the central authority supreme. . .

It is said that the Republican party in allowing each district to vote independently of the State is more democratic and stands more for localism. But the Republican practice does not recognize the district as a unit. It recognizes neither the State nor the district as such. It regards the Convention as representing the individual citizens of the nation. Two delegates are allotted to each district as a convenient geographical division of the country, but each delegate casts his own vote as he pleases, and district instructions cannot bind the two delegates to vote together nor can instructions bind them to vote contrary to their individual judgments. This makes them national representatives, not merely district delegates. It will be noted by those acquainted with American history that these tendencies toward centralization and decentralization respectively, are in harmony with the history and purposes of the two parties.

As to instructions in a Convention, a delegate will generally feel bound to vote according to the resolutions of the State or district convention appointing him. But he is not bound to do so. Repeatedly in the Republican Conventions delegates have disregarded instructions and have been sustained by the Convention in their right to do so. State and district conventions

may instruct their delegates to support the candidacy of a 'favorite son' of the State, and such instructions are usually observed, though not always. After the delegates have been chosen and instructed, something may come to light concerning the proposed nominee, or policy, which may make a violation of instructions desirable, if not necessary. Van Buren's letter in opposition to Texas annexation on April 27, 1844, caused a meeting in Virginia to change instructions; other delegates assumed that their constituents would not regard the instructions as binding; others resigned rather than carry out such instructions. Under such circumstances it may be the duty of delegates to disobey their instructions. In the same Democratic Convention of 1844 the delegates from New York were instructed for Van Buren who were not at heart for him. They voted for a two-thirds rule, which was sure to secure his defeat, and then nominally carried out their instructions by voting for Van Buren on the first ballot. You cannot bind men that have no heart for the cause, men that are untrustworthy and untrue, and it is useless to bind men that are. However, for disregarding his instructions, which, presumably, would be the voice of his constituents, the delegate should show good reasons. He would be condemned, perhaps politically ostracized, as for violating a trust, if he misrepresented and betrayed the people whom he stands for. The ironclad pledge was applied to the members of the National Republican Convention in 1880 by a resolution which asserted that every member of the Convention was 'in honor bound to support its nominee, whoever that nominee may be, and that no man should hold his seat here who is not ready so to agree.' This was an attempt to bind the action of the delegates after the Convention, or to prevent men of independent minds from participating in the party action. Such a pledge will not bind the unscrupulous, and men of honor do not need it.

After the Convention has adopted rules and has determined its membership by accepting the report of its Committee on Credentials, and after it has adopted a platform, it proceeds to

nominate candidates for President and Vice-President. Interest centres in the presidential nomination. So much is this true, except when a party President is to be renominated, that the vice-presidency receives but little consideration. Geographical considerations may influence the choice of the Vice-President, or the victorious wing of the party may confer the nomination on a leader of their defeated opponents as a means of soothing disappointments and conciliating and uniting all elements for the support of the presidential nominee. It often happens that entirely unknown men are named for Vice-President. Of course, this is a dangerous custom, for the Vice-President should be a man as well equipped for the first place as the one who heads the ticket.

In the contest for the presidential nomination certain classes of candidates are recognized. The 'favorite' is one of the prominent, leading candidates, who has been before the public for some time, for whom great preliminary efforts have been made, who, as the first choice of a large number from all parts of the country, and the second choice of many others, has such support as to lead to the expectation that he may be nominated. The 'favorite son' is a leader of prominence and influence in his State, who, however, has not been a figure of national prominence in politics. His support comes chiefly from his home State, not generally from the country at large. His State delegates are probably instructed for him and are working for his nomination. The hope of his nomination is based partly on his recognized fitness, partly on his geographical location, largely on the liability of the Convention to agree upon one of the 'favorites' or on the probability that the 'favorites' will kill one another off. The strife, the personal rivalries, the bitterness and rancor in the Convention are likely to arise among the 'favorites'; the 'favorite sons,' or their managers, seek to avoid exciting personal antagonisms and animosities.

The 'dark horse' is the candidate who comes into the running after the Convention has pretty well spent its energies in attempt-

ing to choose between the 'favorites' and the 'favorite sons.' The candidacy of the 'dark horse' may have been thoroughly planned, the runner may be well groomed by astute managers before his name is mentioned in the Convention, or before he is seriously voted for there. The nomination of a 'dark horse' is not likely to be the result of a spontaneous movement in the Convention, without pre-convention work or plan, though it may be so. A man who is recognized as a fit candidate, but who has not been in the fight for the nomination, whom the Convention and the country are not thinking of as the probable nominee, who has not been identified with either contending faction in the party, who is colorless and unobjectionable, — such a man is an eligible 'dark horse.' A 'dark horse' may be mentioned as such publicly, but it is understood that he is not a candidate, and if there are managers who intend to bring in his name at the opportune time, any intention of a candidacy on his part will be likely to be denied. The struggle in the Convention is not only to nominate a man, — it is equally for the purpose of defeating a certain man, and it often occurs that the struggle resolves itself into 'the field against the "favorite."' If an objectionable 'favorite' cannot be defeated by another 'favorite,' as Grant could not be beaten by Blaine in the Republican Convention of 1880, the field might be united in opposition to the leading 'favorite' by the candidacy of a 'dark horse,' as was done in the nomination of Garfield in that year.

The candidates' names are placed before the Convention on a roll-call of the States. A candidate from one State may have his name placed before the Convention by another State, and this may be seconded by several States in succession. The Convention votes by States, alphabetically, and if the vote as announced by the chairman of the delegation is challenged, the delegation is polled in open Convention.

When there are several candidates before the Convention and the supporters of the various candidates are determined and well organized, the balloting may continue for a number of days.

When the weaker factions begin to change their votes for one of the stronger candidates, the 'break' comes. Instructions and pledges are assumed to have been fulfilled, and the delegates break away from candidates they have so far supported. Decisive balloting is likely to result. Delegates, as a rule, have a fondness for the 'band-wagon,' — that is, they wish to stand in favor with the successful candidate and his managers, and to be identified with the vanguard of victory. Consequently, at a 'break' in the balloting, if a leading candidate seems destined to win there may be a rush of delegates to his support, and we have the 'stampede.' . .

Adjournment is the only means of resisting a stampede, and if that fails, the managers of the field against the favorite see that the battle is lost, and the successful candidate goes in with votes to spare and 'with a hurricane of cheering.' A motion is offered to make the nomination unanimous, and this is supported by the defeated factions with as much grace as possible, and all pledge loyalty and support to the chosen chieftain. The Convention, perhaps after recess, proceeds after the same fashion to nominate a candidate for Vice-President, and the work is done. After appointing the Convention chairman and a committee officially to inform the candidates of their nomination the Convention adjourns *sine die*.

4. A FAVORITE-SON BOOM [1]

Even though by the time the convention meets it may be almost certain who will be the party nominee, still states often loyally put forward their favorite sons as candidates. They may some day be in the position of the more favored candidates, or, if a deadlock threaten, they may even now be the men from among whom the compromise candidate may be chosen.

Chicago, Ill., June 16 — (Special). — Wisconsin made a gallant attempt to-day to pierce the atmosphere of the convention

[1] *Milwaukee Sentinel*, June 17, 1908.

with shafts of enthusiasm, but failed. The state delegation, though hopelessly in the minority, with all hope of nominating its candidate gone, determined to make the convention at least sit up and take notice that the Badger state is on the map. . .

They made a good showing. Even at that Wisconsin was treated but little worse than others. When the Ohio delegation came in with a picture of Taft as big as one of the Dahlman lithographs on the bill boards in the spring primary campaign, there was just a ripple of a cheer.

The idea of doing something to show that they were attending the convention came to the Wisconsin men during the morning. No arrangements had been made, aside from the delegates assembling at the convention, until Dr. J. M. Beffel and Charles A. A. McGee began to wake them up.

Something ought to be done, they said, to show Chicago that there was a La Follette boom in town. No matter if it was so small as not to be easily distinguished in a crowd. Make noise enough and curiosity would do the rest. The plan took. All that was needed was a starter.

Dr. Beffel went out to find a sign painter who could prepare banners and Ellery's band was engaged to head the column of Badgers on a march to the Coliseum. Ten o'clock came and there were no signs of Dr. Beffel. Half past 10 o'clock arrived and still he delayed while the delegates at headquarters began to get nervous. Just before 11 o'clock, the time at which the Wisconsin caucus adjourned, the doctor came tearing into the lobby with a roll under one arm and a bundle of what looked like set pieces for a fireworks show under the other. He dumped both on the assembly room floor where it developed that the one was standards for banners and the other the banners themselves. Here was what the doctor and the sign painter had together evolved, in the way of stirring sentiments:

"Little Bob, the People's Champion." "Physical Valuation of Railroads." "We Stand for Representative Government." "A Sound Currency." "Wisconsin for Robert M. La Follette."

"Probe the Telegraph and Telephone Systems." "Tariff Revision."

The banners were tacked in place and by the time Chairman Brumder called the caucus to order they were ready.

In the caucus Mr. McGee, who had been appointed marshal of the informal parade, announced the delegation, with all Wisconsin people here, would form in double column and march down Jackson boulevard to Michigan avenue to the Auditorium where a stop would be made for the band to play a number or two, when the march would be resumed to the Coliseum. This program was carried out. With the band leading and the delegates at large at the head, the procession moved on the Coliseum. . .

It had been planned to march up the aisle of the Coliseum to Wisconsin's place, with the band leading. But on arriving the assistant sergeant-at-arms at the door backed by a stalwart policeman refused to let the band in as a rule had been adopted against it. The band therefore remained outside while the delegation went on inside and struggled through the crowd in the side aisle to its place, which is to the right in front of the platform, an excellent strategical position when it is wanted to catch the eye of the chairman.

5. CONVENTION ENTHUSIASM[1]

The national convention is a mobile body. The partisans of each candidate do all they can to catch the support of wavering or opposing delegates and to influence the entire body by skillful appeals to the enthusiasm of those in the galleries.

Chicago, Ill., June 18. — Wisconsin's presentation of the name of Robert M. La Follette as its choice for president of the United States was accorded an ovation in the Republican national convention this afternoon such as was given to no other candidate and to no other state. The name of La Follette was

[1] *Milwaukee Free Press*, June 19, 1908.

cheered by the people in the galleries more generally than that of any other candidate.

The La Follette demonstration differed from that for Taft in that it appeared to be entirely spontaneous. It was a demonstration among the spectators, in which but few of the delegates outside of Wisconsin participated, while that for Mr. Taft was participated in by something over 700 delegates who were instructed for him and who voted for him on the roll call.

The La Follette ovation would have been a record breaker had it occurred previously to the attempted stampede for Roosevelt on Wednesday. For more than twenty minutes the spectators in the gallery yelled their approval of the little man from Wisconsin. For twenty minutes the Wisconsin delegation stood upon chairs and waved banners, while Dick White of Milwaukee carried Robert La Follette, Jr., on his shoulders up and down the aisles of the convention hall.

The familiar "U Rah Rah, Wisconsin," was heard in every quarter of the hall. Several efforts were made to stem the ovation, but without avail.

The police attempted to force the Wisconsin delegation to desist, and one policeman approached National Committeeman Alfred T. Rogers and ordered him to get down off his chair to stop the cheering. This effort, too, was without avail. When the cheering had been in progress about twenty minutes, some one secured a large American flag and pinned lithographs of President Roosevelt to it and waved it from the gallery in an effort to turn the La Follette demonstration into one for Roosevelt.

When the Wisconsin delegation saw the Roosevelt flag, they resumed their seats. The character of the demonstration at once changed and the attention of the crowd was diverted to a possibility of stampeding the convention for Roosevelt, but the crowd apparently had spent its Roosevelt enthusiasm on Wednesday, for within two minutes after the presentation of the Roosevelt banners, the demonstration ceased and the roll call began.

When Henry F. Cochems of Milwaukee was introduced to the

convention, the noise and disturbance which had been so pronounced during the latter part of the speech delivered by the man who had directly preceded him, ceased. Mr. Cochems's voice could be heard throughout the major portion of the great hall, and when the crowd learned that he had something to say out of the ordinary run of nominating speeches, he was given splendid attention. He was frequently interrupted by cries of "Good," "Go ahead," "We're for him." . .

Chairman Lodge pounded with his gavel and attempted to restore order, but the pounding of the gavel could not be heard. The band in the rear gallery played. The leader waved his arms, but no one heard the music.

This was Wisconsin day in the convention. Twice Wisconsin was heard from. Twice the galleries shouted their approval. Every Wisconsin man in Chicago was hoarse. Every Wisconsin man was happy.

6. CONVENTION ORATORY[1]

Nominating speeches are famous for the fervid oratory which is often their characteristic. More than one party candidate has owed his influence in the convention and even his final nomination to a successful appeal to some phase of the overflowing party feeling, made by the man who places the candidate's name before the convention.

Wisconsin offers her candidate to the nation, not because he is her favorite son, not because we know him and love him, not because of his ability, integrity, and experience alone, but because in him we know there is embodied in ideal poise and balance those other splendid elements and attributes which most nearly respond to the requirements of the hour and the demands of the people, and which alone qualify for leadership in this great national crisis.

[1] Cochems, H. F., *Speech nominating Robert M. La Follette for President*, 1908.

The paramount problem pressing for solution to-day has no parallel in the economic or industrial history of man. In a generation since the war of the rebellion we have rushed at a runaway pace from industrial freedom to industrial oligarchy. . .

A government founded on a theory of equality of opportunity cannot survive when social and economic opportunity have been extinguished. We have here a problem in institutional history which looks beyond the selfish purpose of the hour and sees with sure perspective and clear vision the rights of generations to come and the future destiny of our common country.

Ten years ago Wisconsin was as shackled as they are to-day in most of the states of the union. The interests controlled the state government completely. They were powerfully entrenched. Led by the Governor, two United States Senators, eight out of eleven members of Congress, and a corps of past masters in the political game, they counted in solid rank the state Legislature, state employees, and four thousand federal employees. Their propaganda was published through a united daily press and ninety per cent of the country newspapers. Their commissary was largely furnished from the treasury of three great railroads, the united public service interests, and wealth of the state. The recession of the Populist movement made the term "reformer" or "radical" an obnoxious stigma in our conservative state. It was a stubborn soil in which to plant seeds of reform which promised a harvest of bitterness and disappointment. None but a man of iron soul, none but a man of heroic purpose, would have dared to contemplate the contest against such odds. But Providence has furnished us the man. A man who saw clearly and was not afraid.

You know something of the furious warfare which has gone forward in Wisconsin during those years. It was a holy war in the people's cause. Year after year, riding the saddle by night and by day, his sword was never sheathed. When the way was dark he kept the fires lighted upon the hills; when the people wearied his strong arm was about them. . .

To those who call him Radical our reply is that the radicals to-day are the blind, without perspective, who will not see that the demands of conditions have outstripped the relief of legislation, and who obstruct the passage of such necessary relief. Our further answer is that no propaganda was ever announced in his career which has not been justified by the course of events and to-day in Wisconsin no man asks the repeal of a letter of the laws written upon the books through his labor and his genius. We have never marched to Moscow, have never struck our colors, and we have never sounded a retreat. The meaning of conservatism has been prostituted to mean stagnation. The country demands a progressive conservative, a man who, instructed by the lessons of the past, will yet move on and on, planting the flag further and yet further forward, until justice shall come into its own and the spirit of American institutions be vindicated.

If we are to stay the fatal progress of perverse conditions we cannot falter, we cannot compromise, we cannot turn back. This is a war, a war in which modern industrialism is on trial and in which the institution of private property is being weighed in the balance. In this contest there is no place for the genial and gentle art, or men of peace, for compromise to-day spells death. In this war the people will have their own leader. They will have no raw recruit, but a veteran, bronzed and battered in the conflict. They will have no cadet, but a general, skilled not only in regular battle, but who has triumphed over Indian and guerilla warfare; who cannot be seduced by flattery and smiling promise, who knows the proffered hand of Esau, and who will fight on and on until predatory wealth has found its Appomattox.

We offer him here. I have seen him in the fray, with jaw set, his eyes blazing, his whole figure instinct with indomitable energy for the justice of his cause. Man of battle, unparalleled in the history of American politics, fighting the cause of the common people, his sword ringing upon the armor of his enemy, neither asking nor giving quarter. Call him ambitious, call him hypocrite, call him demagogue, all familiar words in the vernacu-

lar of his enemies, but call him what you will, he will live in memory as the most splendid type of fighting citizen which this generation has given to the Republic. . .

We believe that the pioneer in this movement who was good enough to break the stubborn soil and plant the seed, is good enough to reap the golden harvest and bring it home to the people in its bounty. Through all the years Robert M. La Follette has stood like "a bold mountain about whose summits the hurricanes have raged in vain and upon whose base the angry waves have beat their surge, unshaken and unshakeable." For ten years he has carried this war upon the point of his sword and from the light that gleamed from his shining blade was lit the blaze that carried forward the war in Wisconsin, fired the heart of Roosevelt, and to-day, like the face of the morning, is leading the national crusaders along the pathway of reform.

The laborer is worthy of his hire. Wisconsin offers her foremost citizen, a man of iron with a heart of gold, Robert M. La Follette.

7. THE ELECTION OF THE PRESIDENT OF THE UNITED STATES [1]

Few of us realize that nominally no citizen votes at the national election for a candidate for President. The vote is for one who is nominally to help select, though in fact only to be the bearer of the party will as to who should be, President. How these members of the so-called "electoral college" are chosen, is a matter still left almost entirely with the states. The Federal government has, however, provided how the votes of the "electors" shall be cast.

The highest offices in the national government are not filled by direct vote. The president and vice-president are chosen by the electoral college; United States senators are elected by the legislatures of the states, and the judges of the United States supreme court are appointed by the president with the consent of the senate. . .

[1] Fuller, R. H., *Government by the People.* Macmillan, 1908; pp. 120–134.

Although the names of the party candidates for president and vice-president appear upon the ballots, the voters do not vote for them but for presidential electors, whose duty it is to elect them. The framers of the constitution did not deem it wise to leave the choice of the president to the mass of the voters, because they feared that the voters were not sufficiently conservative and intelligent to make a judicious choice. Their distrust has been corrected by custom and precedent, but it is still possible for a presidential candidate to be the choice of a majority of all the voters participating in the election and yet suffer defeat.

Various plans were proposed for the election of the president without resort to a direct vote. It was suggested that the election be left to the congress, but the constitutional convention was unwilling to adopt this idea because it would make the chief executive subordinate to the legislative body. The plan of leaving the election to the state legislatures was also rejected. The convention finally decided to create an electoral college, containing as many electors as there are senators and representatives in congress, on the theory that such a body would represent the best intelligence of the nation. Party organization was then in embryo. The national party convention had not yet come into existence and there was no recognized method of designating party candidates. The election turned upon the qualifications of the individual candidates rather than upon the principles and doctrines of the parties to which they belonged. The electors, therefore, were left free to exercise their own judgment in casting their votes for the two highest national offices.

It was provided that if no candidate received a majority of the votes in the electoral college, then the house of representatives should elect, its members voting by states and each state having one vote. The choice of the house, however, was limited originally to the five, and after 1804 to the three, candidates who had received the highest number of votes in the electoral college.

The constitution originally required each elector to vote for

two candidates for president and the candidate who received the most votes was declared elected president, while the candidate who received the next highest number of votes was declared elected vice-president. This plan gave the strongest candidate in the electoral college the presidency and his foremost competitor the vice-presidency. It was very likely that the two men would hold opposing political views, so that, in effect, the majority party elected the president and the minority party the vice-president. In case of the death of the president while in office, the majority party would have been compelled to give way to the minority, since the vice-president would succeed to the presidency. The adoption of this plan could have been possible only at a time when men were considered rather than parties, when parties had not begun to formulate their principles in national "platforms," and when the offices within the appointing power of the president were not used to build up party organizations upon the plan of the "spoils system." George Washington was twice elected president by practically unanimous consent. The federalists in 1796 united upon John Adams for president and Thomas Pinckney for vice-president, while the democratic-republicans selected Thomas Jefferson for president and Aaron Burr for vice-president. There were 138 electors in the electoral college and each of them voted for two candidates for president. The result gave Adams seventy-one votes, Jefferson sixty-eight, Pinckney fifty-nine, Burr thirty, Samuel Adams fifteen, Oliver Ellsworth eleven, George Clinton seven, John Jay five, James Iredell three, George Washington two, John Henry two, Samuel Johnson two, and Charles C. Pinckney one. John Adams was elected president and Thomas Jefferson, his great rival, was made vice-president. This was the first presidential election in which there was a contest.

In the next presidential election, in 1800, the two parties put forward the same candidates as before and the members of the electoral college for the first time voted by parties. Jefferson and Burr each received seventy-three votes, the full strength of

the democratic-republicans. Adams received sixty-five votes, and Pinckney sixty-four, one federalist elector voting for John Jay so that Adams might have one more vote than Pinckney and thus be entitled to the presidency if the federalists should win. The democratic-republicans had not taken this precaution and therefore there was a tie vote between their two candidates, Jefferson and Burr, for the presidency, although they had intended to elect Burr to the vice-presidency. Because of this tie, the election was thrown into the house of representatives, where, after thirty-six ballots, ten states voted for Jefferson and four for Burr. The constitution was then amended so as to provide for the election of the president and the vice-president by separate ballots for each office.

In the presidential campaign of 1824 Andrew Jackson, John Quincy Adams, Henry Clay, and William H. Crawford were candidates for president. John C. Calhoun was chosen vice-president by the electoral college, but none of the presidential candidates had a majority of the electors, the vote being: Jackson ninety-nine, Adams eighty-four, Crawford forty-one, and Clay thirty-seven. The election of the president, therefore, was again thrown into the house of representatives and Adams was elected by a majority of the states, receiving thirteen votes to seven for Jackson and four for Crawford. Clay had been dropped because he was not among the first three in the electoral college.

The closest presidential election was that of 1884, when Grover Cleveland, Democrat, defeated James G. Blaine, Republican. The popular vote for the presidential electors nominated by the democrats was 4,854,986, while the electors nominated by the republicans received 4,855,011 votes. Blaine, therefore, had twenty-five votes more than Cleveland in a total vote of the parties, whose candidates they were, of 9,709,997. In the electoral college Cleveland had 219 votes and Blaine 182.

This was due to the fact that the Democratic electors carried New York state by a plurality of 1149 in a total vote of the two

great parties in the state of 1,125,159. This gave Cleveland the thirty-six electoral votes of the state. The result of this election demonstrated the importance of preventing fraud in the casting and counting of the votes and gave a powerful impetus to the passage of election reform laws. A change of only 575 votes from the democratic to the republican side would have changed the result.

Although Cleveland received a plurality of the popular vote in 1888 he was defeated by Benjamin Harrison, republican. The total vote for the democratic electors was 5,540,329, and for the republican electors 5,439,853. The democratic electors thus received 100,476 more votes than the republican electors, but the thirty-six electoral votes of New York state again decided the result. The republican electors carried the state by a plurality of 13,002 in a total vote cast by the two parties of 1,284,516, and in the electoral college Harrison had 233 votes to 168 for Cleveland. . .

There is no general law regulating the election of presidential electors. The federal constitution says that: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in congress." Under this permission some of the states passed laws providing for the choice of electors by the legislature, while other states chose them by popular vote. All of the states, with the exception of South Carolina, abandoned the legislative election of electors after 1824, but South Carolina continued it until the civil war. In many of the states before 1832 electors corresponding to representatives in congress were chosen by congressional districts, while the two electors corresponding to the two United States senators were elected "at large" by the voters of the entire state. Under this method it was possible for the electoral vote of a state to be divided in the electoral college according to the political complexion of congressional districts. Michigan is the only state which has followed this plan in recent years.

It gave Cleveland five electoral votes in 1892 and Harrison nine. The rule now generally accepted is to nominate all the electors in a state convention, distinguishing the two electors-at-large from the district electors. The list thus nominated by each party is printed on the official ballot beneath the names of the candidates nominated by the national convention of the party for president and vice-president, who cannot be voted for directly. It is usual for a voter to say that he cast his ballot for this or that candidate for president when, as a matter of fact, he actually voted for the electors named by the party whose candidate for president he supported.

Even when the electors are voted for by all the voters in a state, it is still possible that they may be divided by party lines. In counting the votes cast for electors, the individual candidates are declared elected in the order of the number of votes each has received until the number of electors to which the state is entitled in the electoral college is complete. While the electors nominated by a party in a state are usually either elected or defeated in a body, the scratching of tickets may divide the electoral vote of a state. For example, if a state is entitled to ten electoral votes, the majority party may elect nine of its candidates for electors while the tenth, either because of his unpopularity or the popularity of one of the candidates on the minority party ticket, may be defeated.

There is no general assemblage of the electoral college. The constitution provides that the electors shall meet in their respective states and vote by distinct ballots for president and vice-president, making separate certified lists of all persons receiving votes for each office and the number of votes received by each candidate. These lists must be sent sealed to the president of the senate who must break the seals in the presence of the senate and the house of representatives, and the votes must then be counted. The candidates for president and vice-president who are found to have received a majority of all the electoral votes are declared elected. If no candidate for president

has received such a majority, the members of the house of representatives must immediately proceed to choose a president from among the three candidates having the largest number of electoral votes. The vote of the house must be taken by states and a majority of all the states is necessary to a choice. If no candidate for vice-president has a majority of all the electoral votes, the senate must choose as vice-president one of the two candidates who have received the highest number of electoral votes and a majority of all the senators is necessary to a choice.

The growth of party power and influence has destroyed the freedom of choice which was left to the electors by the constitution. The electors are now regarded as mere representatives of the party which chooses them, bound to vote for the candidates for president and vice-president nominated by that party. There is nothing in the law to prevent an elector from voting for any candidate, but the moral obligation to vote only for the candidates of his party is so strong that it is never broken.

No provision was made in the constitution for the settlement of controversies over the choice of electors. This omission led to a dangerous crisis after the presidential election of 1876, when Samuel J. Tilden was nominated by the democrats and Rutherford B. Hayes by the republicans. It was conceded that Tilden had received a popular plurality of more than 250,000 votes, but the returns from several of the states were disputed, each party claiming the electors and each sending the vote of its electors to the president of the senate. The democrats had a majority in the house and the republicans in the senate, so that neither party was able to have its return from the disputed states declared valid. It was finally decided to refer the controversy to a "Returning Board" or electoral commission, consisting of five senators, five representatives, and five judges of the United States supreme court. This commission decided that Hayes had carried Florida by a plurality of 926 and Louisiana by a plurality of 4627. The supreme court of Florida had given Tilden a plurality of 94 in that state and the face of the returns in

Louisiana, it was asserted, gave Tilden 5303 plurality. The electoral votes of these two states, however, were counted for Hayes, giving him 185 electoral votes and Tilden 184. The count was not completed until two days before March 4, 1877, when the new president was to be inaugurated. The democrats insisted that the election had been stolen from them and there was talk of using force to prevent the inauguration of Hayes. Tilden counselled submission and the excitement died away; but the democratic party has always since alluded to the election of Hayes as "the crime of '76."

To prevent the recurrence of such a controversy congress passed an act in 1887 which is known as the electoral count act. It provides that the electors shall meet in the several states and cast their ballots on the second Monday in January following their election. In case of a dispute in any state a decision reached in accordance with any law of the state existing at least six days before the time set for the meeting of the electors shall be binding. The governor of each state is required, as soon as practicable after electors have been chosen and contests have been decided, to forward to the secretary of state of the United States the certificate of their election, and the governor must also provide the electors with three similar certificates, one of which must be transmitted by the electors to the president of the senate. Congress is required to be in session on the second Wednesday in February following each national election. Both houses must meet in joint session, presided over by the president of the senate, who must open the sealed returns of the electoral vote from each state in alphabetical order. The vote must be canvassed by four tellers, two appointed by the senate and two by the house, and the result announced. One senator and one representative may object in writing to the reception of the return from any state. Objections must be considered by each house separately, and no return given by duly certified electors in a state from which only one return has been received can be rejected; but the two houses concurrently may reject a return

made by electors whose appointment has not been certified. If two returns are received from the same state, the return made by the certified electors must be counted. Should there be a dispute regarding the legality of the certification or of the vote cast by the electors, congress may decide by concurrent vote which return is valid, and if the two houses cannot agree, preference shall be given to the vote cast by the electors whose appointment was certified by the executive of the state under the state seal. When objection has been made to the return from a state, it must be disposed of before the count can continue. No debate is permitted in the joint session, and when objections are being considered by the houses separately each senator and representative is permitted to make only one speech limited to five minutes. Debates cannot last longer than two hours. The joint session cannot adjourn until the count is completed and the result has been declared; but if a question of procedure under the act has arisen a recess may be taken until ten o'clock in the morning of the next day. Not even a recess is permitted, however, if the count has not been completed on the fifth day after it began. The announcement of the result by the president of the senate constitutes the declaration of the result of the election.

There has been more or less agitation, especially during the last few years, for a change in the constitution which will abolish the electoral college and provide for the election of the president and vice-president by direct vote. It is not probable that the change will be made, at least in the near future, because it would necessitate uniformity in the qualifications prescribed for voters, and the diversity of opinion on this subject in the various states seems too great to be reconciled.

8. THE ELECTORAL COLLEGE [1]

The actual working of the formal electoral college does not attract popular interest — in fact it takes place almost unnoticed except by the presidential electors themselves. The character of their work and the legal provisions governing it are sketched as follows.

The popular conception of the election of the President of the United States becomes confused so frequently by the importance attached to the enumeration of the popular vote, that a careful statement of the machinery by which the President is elected is essential. Although the announcement made quadrennially, within a few days after the Presidential election, of the number of votes cast for each Presidential nominee is usually regarded as conclusive, no actual election takes place until the second Wednesday of the February next following. The Constitution provides that each State shall appoint, in the manner to be determined by the legislature of the State, the Presidential Electors, who shall be equal in number to the whole number of Senators and Representatives to which the State is entitled in Congress. This number is composed of two, representing the number of Senators, and a sufficient number in addition to give one Elector for each Representative in Congress, proportioned on the apportionment of Representatives provided by law, or if the apportionment has not been made on the last decennial census, the number provided under the old apportionment remains in effect. No Senator, Representative, or other Federal officeholder can be appointed as an elector. It is the universal custom to appoint Electors by popular ballot, though it was formerly the practice in some of the States, for the legislature to select the Electors. The power is given to Congress to choose the time of appointing the Electors, and the day on which they shall give their votes, which day must be uniform throughout

[1] Gauss, H. C., *The American Government.* Hammersly, L. R. & Co., New York, 1908; pp. 19–22.

the United States. The day of choosing the Electors has been fixed as the first Tuesday after the first Monday in November. The States are empowered to fill any vacancies which may occur in the list of Electors, and if no election occurs the legislature may set a later date for the election. In case of a dispute as to the legality of an election of any Elector or Electors, the determination of the person properly selected may be fixed by a provision of the State statutes, providing such a statute has been passed by the State Legislature six days prior to the second Monday in January, on which day the Electors are required to meet and cast their votes. The Secretary of State of each State must provide three copies of a list certifying the names of the persons who have been properly elected as Presidential Electors. On the second Monday in January, the Electors must meet and cast their ballots for President and Vice-President respectively, making three copies of the number of ballots cast, and annexing to each copy the certified list of Electors, furnished them by the Secretary of State. These three certificates must be sealed up and a certification placed upon each of its contents, that it contains the result of the election. One of the copies so sealed up is entrusted to a person who is appointed by the Electors in writing to be delivered by him to the President of the Senate of the United States, before the Wednesday next ensuing. The second copy is forwarded by the Post office to the President of the Senate, and the third copy is deposited with the Judge of the United States District Court of the district in which the election has been held.

The two Houses of the Congress meet in the House of Representatives Hall, at one o'clock in the afternoon of the second Wednesday in February, following the meeting of the Electors, to witness the count of the number of ballots thus cast. The President of the Senate presides and two members of each House are appointed as tellers, previously to the meeting in assemblage. The President of the Senate opens the ballots returned by the States in the alphabetical order of the States, beginning with

the letter "A," and the result of each ballot is announced, and later the total result is declared. Should there be any objection to the ballots as returned, challenging their legality, such objection must be presented in writing and signed by at least one Senator and one Member of the House of Representatives. If objections are presented to the vote of any State, the opening of the ballots is suspended, and the Senate withdraws to consider the objections in separate session. The House also goes into separate session to consider the objections presented. If only one set of ballots is returned from a State, no vote may be rejected unless the two Houses concur that the Electors had not voted regularly. If more than one set of ballots are presented, those are to be counted which are certified as regular by the machinery provided by the State to determine the regularity of such ballots, but if it appears that there are two authorities claiming to pass on the regularity of the votes, the matter is settled by concurrent vote of both Houses in separate session. If no machinery has been provided by the State for the determination of the regularity of the electoral ballot, the choice between contesting ballots is to be by concurrent action, and in case of disagreement between the two Houses, the certificate of the Executive of the State in question, as to the regularity of either of the ballots is to be accepted.

During the pendency of the question as to the regularity of the ballot of any State, no action can be taken on the returns of any other States. No recess of Congress can be taken except from day to day, unless over Sunday, and after five days, no recess at all can be taken. Upon the completion of the opening of the ballots and the tabulation of the results, the vote is declared by the President of the Senate as the official announcement of the election of the President of the United States. If the returns from any State are not received by the President of the Senate before the fourth Monday in January, the Secretary of State of the United States must send a special messenger to the Judge with whom the third copy of the election returns has been de-

posited, to secure that copy. When there is no President of the Senate in Washington to receive the returns, the Secretary of State is empowered to receive them.

9. THE ELECTORAL COLLEGE — ITS DEFECTS [1]

The use of an "electoral college" of the sort now provided for the election of President has been subject to severe criticism, especially in recent years. It is felt there are serious omissions in our present system which may give rise to serious deadlocks. Further, the people, in spite of the fact that the "electoral college" is merely a recording machine, do not have the direct influence in the elections which many wish.

From the outset of the Government until 1832 great diversity prevailed in the methods in use in the different States in the appointment of electors; and repeated changes were made in almost every State in the law prescribing the manner of their selection. Inasmuch as each State Legislature could alter the method at its pleasure, the mode of election became "as various as the views of different States, and as changeable as the power and ascendency of rival parties." Whether the district system, as Chief Justice Fuller asserts, and as Madison's writings seem to show, was considered by many of the members of the convention of 1787 as the most equitable, or whether there was any consensus of opinion among the delegates beyond that manifested in the decision to entrust the appointment to each State Legislature, it is easy to perceive the disadvantages entailed by the failure of the fathers to agree upon a uniform plan for all the States. Hardly had the Constitution been ratified by the requisite number of States ere contests arose over the method of appointment of electors; and these continued with more or less virulence until the almost universal adoption of the general-ticket system in 1832. . .

[1] Dougherty, J. H., *The Electoral System of the United States.* G. P. Putnam's Sons, New York; Ch. XI, pp. 281–324.

It would be tedious to pursue the narrative of the numerous, almost kaleidoscopic, changes in the methods of selecting the men who were to represent the States in the choice of President and Vice-President. The animating purpose of the "diversified and clashing expedients" adopted by the States was the political advantage of the party or faction in temporary control in any State; certainly, whatever the intention of the convention of 1787, its surviving members could not have felt much gratification in the actual operation of this feature of its work. . .

In 1824 the electors were chosen by popular vote, by districts and by general ticket, in all the states excepting Delaware, Georgia, Louisiana, New York, South Carolina, and Vermont, where they were still chosen by the legislature. On March 13, 1825, the legislature of New York established the district system, but not until it had first polled the sentiment of the people by formally submitting the question to them. The answer was so unequivocal as to dispel all doubt of the popular desire for an election by districts. The act provided for the appointment of one of the thirty-four presidential electors in each district by the voters, and authorized the electoral college not only to supply vacancies in its body, but also to appoint two additional electors corresponding to the two senators from the state in the senate of the United States. This law, upon the recommendation of Van Buren, then governor, was superseded in 1829 by the law establishing the general-ticket system. In 1828, Delaware and South Carolina alone adhered to the legislative system. After 1832 electors were chosen by general ticket in all the states excepting South Carolina, where the legislature chose them up to and including 1860. The legislative mode of choice was adopted by Florida in 1868, and by Colorado in 1876, as prescribed by section 19 of the schedule to the constitution of the state, which was admitted into the union August 1, 1876.

The abandonment of the district system became inevitable as the few states which had employed it began to realize the disadvantages they suffered in comparison with the states that had

adopted the general-ticket system. Since the vote of the state, when cast in solido, swung the whole of its electoral strength in favor of the candidate of one party or the other, every other state in which that party was ordinarily dominant would naturally follow such example and thereby enhance the influence and importance of its leaders in party matters, and add to the prestige of the state itself. States under the control of the opposition could not afford to give their political adversaries such odds as would result from the division of their electoral vote by the continuance of the district system, while their enemies were casting their electoral votes *en bloc*. *Divide et impera* was a maxim of no application to such contests. Hence the rapid adoption of the general-ticket system, which amounts in reality to a poll of states ("The present mode of choosing the president is, though not generally so called, an election by states.") and in which the voice of the minority is suppressed. One unhappy consequence is the creation in every state of a class of political leaders, often persons occupying no official place, whose influence in achieving party successes has made them potent in party councils and party appointments. . .

One evil result of the general-ticket system, one great objection to the present electoral system is that it absolutely circumscribes the power and the rights of the individual voter. He cannot now vote for the man of his choice for president, but must vote for electors. There may be two sets of electors representing two different parties before the people, but he may not be in favor of either, and would prefer to cast his vote for a third; yet he has no power to do it. It would be impossible for him alone in the state in which he lives to put candidates for electors in the field who would vote for the man of his choice. That can only be done by an organized party, which may have no considerable vote in the state in which he lives, though it may be strong in other states. As an illustration: In 1856, thousands of men in the southern states were absolutely deprived of the right of voting for president and vice-president, because no

electoral tickets for Fremont and Dayton had there been put in the field.

"In effect, the electoral system absolutely deprives the voter of his power to vote for men of his choice for president and vice-president unless there are enough of his way of thinking in the same state to meet in convention and nominate electors to represent their views. Such a system can scarcely be called free or republican. No system deserves that name which does not enable the individual voter to cast his vote for the men of his choice, whether anybody else in the same state votes for them or not. The electoral system makes the convention or caucus indispensable in all cases and everywhere, for the individual voter cannot give effect to his vote, or give to it moral political significance, unless there are others who will act in concert, that is, convention, with him in the nomination of candidates for electors." (Morton, from speech in senate, 1873.) It is destructive of all incentive to the development of an opposition party organization in a state in which one of the two great parties is constantly predominant. The district system or an apportionment system would probably have led to the formation of an antagonistic party and to active political work in districts which seemed to be auspicious fields of operation. In many of the southern states in the decades preceding the Civil War there was no Whig or Republican organization, because such an organization had no chance of success in the state at large. The educational influence of discussion in district centres was altogether sacrificed and a potent factor against the tyranny of a majority party utterly lost. In a government by discussion (to borrow a phrase from the late Walter Bagehot) social and political development is seriously retarded; the injury which a community thus persistently dominated by one party sustains is almost incalculable. The baneful consequences of the general-ticket system were witnessed in less degree, during the free silver campaigns, in communities where the advocates of the gold standard, however numerous, had no chance of exerting a direct in-

fluence upon the choice of presidential electors, because they were out-voted by the friends of silver. A system of voting that would permit the expression of minority views, and hence give a more faithful picture of opinion through a state, would have more promptly checked unsound tendencies in finance. Government by majority was never intended to nullify minority sentiment; the general-ticket system not only renders such sentiment inactive, but tends altogether to repress it.

In states in which opposing party organizations flourish and where each is alternately successful, what have been styled the "close" states, the temptation to fraud receives powerful accession under the general-ticket system. Almost every critic of the electoral system has commented upon this obvious danger. A fraudulent ballot cast at a presidential election in New York, said an able writer, (Richard H. Dana, Jr., in 117 N. A. R.) in 1873, "affects thirty-five electors, or nearly one fifth of the whole number requisite to the choice of a president. In Rhode Island such a ballot affects only three electors, or less than one sixtieth of a majority of the whole electoral college. Here is a direct bounty on the concentration of fraudulent efforts of all kinds in the large states, whereby not only a vicious influence of fearful intensity is thrown into the scale of a national election, but all the local elements of corruption, ever sufficiently formidable in our most populous states, are powerfully reinforced;" whereas "under the district system, on the other hand, a fraud upon the ballot box can affect but one elector, unless two electors at large should be chosen in each state, in which case but three electors at the most could be affected by a given fraud."

It is hard to conceive of a system more easily adapted than the general-ticket system to the successful perpetration of fraud or offering more seductive inducements to its commission. . .

The densely populated States, upon the general-ticket system, constantly tend to nullify the vote of the smaller commonwealths. It has several times happened in the history of the nation that the State of New York has been the determining factor in a presi-

dential campaign — the "pivotal" State; in fact, with the exception of the campaigns of 1868 and 1876, no election since 1856 has gone in favor of a party that has not carried New York. The tendency which has been so marked for two generations, and is increasingly evident, towards the concentration of people in large municipalities, will make such States even more influential in the future, their big electoral vote more and more decisive, the temptation to fraud more seductive, and the profit from its successful perpetration more certain. . . New York to-day wields thirty-nine electoral votes, which is the equivalent of thirteen of the smallest States, and if, under the system at present in vogue, a transferred vote of five to six hundred will place it in the Democratic or the Republican column, — and no greater change would have taken the State from Cleveland and given it to Blaine in 1884, — the incentive to prostitution and abuse of the suffrage could not be rendered stronger; and even in an ideal community, where the purity of the ballot-box is untarnished, the vote of the big State, like that of the large stockholder, counts rather in a geometrical than an arithmetical progression. A plurality or majority in one section may, it is true, at times be counteracted by one in another section, and thus the net result be a rude approximation to fairness, taking the country as a whole; but this theory of averages may not work constantly, and the steady suppression of minority conviction in a state is an undisputed evil. . .

This study of the methods that have been employed by the State Legislatures in the appointment of electors shows the eminent desirability of a uniform system. The evils of the general-ticket system become more and more potent and alarming. Although they were graphically depicted in 1826, in the report of Benton's committee to the Senate and of McDuffie's committee to the House, it was not possible then to appreciate the mighty force wielded by a great State in crushing the opposition of a dozen smaller commonwealths. Dickerson, of New Jersey, in 1824, thought it a dangerous portent that in an election by

electors six great states might control the election and completely nullify the power or influence of eighteen others; to-day one great state exercises far more influence, for its decision may involve the destinies of all forty-five. The general-ticket system is at present universal, but the control over the method of appointment which the present constitution gives to the states may result in future diversity. It cannot be foreseen what powerful impulsions may hereafter arise to cause some state legislature to disfranchise the people and revest itself with the power of appointment or confer it upon some small coterie, "the directors of a bank," or some other board or body which shall thus speak the voice of the state. Uniformity can be permanently assured only by an amendment to the national constitution. A constitutional provision fixing territorial units for electoral votes, or apportioning the electoral vote of a state in the ratio of its popular vote among the different candidates, would have prevented many of the numerous factional and party struggles so common in earlier history, the aim of which was so to control electors by skilfully timed changes in the mode of appointment as to subserve the interests of individuals and organizations. Time has also shown the force of some of the objections urged against the district system. The device of the "gerrymander," as Senator Edmunds, . . . only a few years ago, said, is being more and more employed, both in respect of congressional representation and in the election of state legislatures.[1] While the district system, properly safeguarded, would insure minorities some degree of representation, lessen fraudulent voting, and aid in awakening opposing parties within a commonwealth, no system yet suggested would achieve these ends so completely as would the apportionment system.

[1] "Perils of our National Elections," 12 Forum, 691. The article gives a picture of the redistricting of Alabama, February 13, 1891.

V. Senatorial Elections

1. Constitutional and legal provisions concerning the election of United States senators

The legal provisions controlling the election of senators are only partly contained in the Federal constitution. Congress has executed the power granted it to "make or alter . . . regulations" by the states as to the manner in which they are to carry on these elections and the states themselves have added further rules.

(*a*) *United States Constitution*

Art. I. Sec. 3. The senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. . .

Sec. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. . .

Sec. 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties, as each house may provide. . .

(*b*) *United States Statutes*[1]

Sec. 14. The Legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress.

Sec. 15. Such election shall be conducted in the following manner: Each House shall openly, by a viva voce vote of each member present, name one person for Senator in Congress from the State, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each House, shall be entered on the journal of that House by the Clerk or Secretary thereof; or if either House fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place as aforesaid, the members of the two Houses shall convene in joint assembly, and the journal of each House shall then be read, and if the same person has received a majority of all the votes in each House, he shall be declared duly elected Senator. But if the same person has not received a majority of the votes in each House, or if

[1] Title II, Ch. 1, Rev. Stat. U.S.

either House has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for Senator; and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both Houses being present and voting, shall be declared duly elected. If no person receive such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the Legislature, and shall take at least one vote until a Senator is elected.

Sec. 16. Whenever, on the meeting of the Legislature of any State, a vacancy exists in the representation of such State in the Senate, the Legislature shall proceed on the second Tuesday after meeting and organization, to elect a person to fill such vacancy, in the manner prescribed in the preceding section for the election of a Senator for a full term.

Sec. 17. Whenever, during the session of the Legislature of any State, a vacancy occurs in the representation of such State in the Senate, similar proceedings to fill such vacancy shall be had on the second Tuesday after the Legislature is organized and has had notice of such vacancy.

Sec. 18. It shall be the duty of the Executive of the State from which any Senator has been chosen, to certify his election under the seal of the State, to the President of the Senate of the United States.

Sec. 19. The certificate mentioned in the preceding section shall be countersigned by the Secretary of State of the state.

(c) *A State Law on the Election of United States Senator*[1]

The act of assembly of January 11, 1867, regulating the election of United States Senators is as follows, viz.:

Section 1. Be it enacted, etc., That each House of the Legislature shall appoint one teller, and nominate at least one person

[1] *Smull's Legislative Handbook.* (Pennsylvania), 1909; p. 914.

to fill the office of Senator, to represent this State in the Senate of the United States, and at least two days previous to the joint meeting, hereinafter mentioned, communicate to the other House the names of the persons so appointed and nominated.

Section 2. At the hour of three P.M., on the second Tuesday after the meeting and organization of the Legislature, which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent this State in Congress, to-wit: On the third Tuesday of January, if the Legislature shall have organized previous to the second Tuesday, but if not so organized, then on the second Tuesday after the organization thereof, not counting the day on which the Legislature was organized, each House shall openly, by a viva voce vote of each member present, name one person for Senator in Congress, from this State; and the name of the person so voted for, who shall have a majority of the whole number of votes cast in each House, shall be entered on the Journal of each House, by the clerk thereof; but if either House shall fail to give such majority to any person, on said day, that fact shall be entered on the Journal; at twelve o'clock meridian, of the day following that on which the proceedings are required to take place as aforesaid, the members of the two Houses shall convene in joint assembly, and the Journal of each House shall then be read, and if the same person shall have received a majority of all the votes in each House, such person shall be declared duly elected Senator, to represent this State in the Congress of the United States; but if the same person shall not have received a majority of the votes in each House, or if either House shall have failed to take proceedings, as required by this act, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for the purpose aforesaid, and the person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both Houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall

meet at twelve o'clock meridian of each succeeding day, during the session of the Legislature, and take at least one vote, until a Senator shall be elected.

Section 3. Whenever, on the meeting of the Legislature, a vacancy shall exist in the representation of this State in the Senate of the United States, the Legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a Senator for a full term; and if a vacancy shall happen during the session of the Legislature, then on the second Tuesday after the Legislature shall have notice of such vacancy.

Section 4. When the election shall be closed, as aforesaid, the president of the convention shall announce the person, who shall have received a majority of votes aforesaid, to be duly elected a Senator, to represent this State in the Senate of the United States; and he shall, in the presence of the members of both Houses, sign four several certificates of the election, attested by the tellers; one of which certificates shall be transmitted, by the president of the convention, to the Governor of this Commonwealth, one to the person so elected, and the remaining two shall be preserved among the records and entered at length on the Journals of each House.

Section 5. It shall be the duty of the Governor, immediately after receiving the certificate of the election of any Senator to certify his election, under the seal of the State, which certificate shall be countersigned by the Secretary of State.

2. A CORRUPT SENATORIAL ELECTION [1]

Senatorial elections have been subject to more abuse than any others involving national offices. Deadlocks and corruption have often either kept states unrepresented or have caused their misrepresentation in our national upper house.

[1] Connolly, C. P., "The Story of Montana." *McClure's*. Nov., 1906; Vol. 28, No. 1, pp. 41–43 and p. 27.

This excerpt describes the last day of the struggle in January, 1899, between Marcus Daly and William A. Clark for the office of United States Senator from Montana. Portions of the narrative are here transposed.

The morning of Saturday, January 28th, dawned crisp and clear. The sunlight flashed on the hills surrounding the capitol, making the great combs on the mountain-tops glisten like diamond crescents.

A funeral pall hung over the Daly forces, while the Clark men, drawn and haggard from the strain of the long struggle, found relief in the fact that the die was cast and no power on earth could stay Clark's vindication. W. A. Clark's face was like that of a man crucified by suffering. His red eyes looked like the windows of a building within which a conflagration raged. Men who had barely slept for days and weeks had retired toward morning to snatch a few hours of rest. . .

How would that courageous band of Daly men act their part now? They were sullen, uncompromising, defiant foes. Like sailors who know the ship will sink within an hour, they stood with their arms folded. It was strange that on this morning no Clark man felt elation. It was not in the air. The battle had been too bloody. They had these poor voters now, like rabbits in a warren, and would slaughter without mercy; but there was no exultation.

As early as eight o'clock, crowds of men and women could be seen moving toward the temporary capitol. At first they came in broken, irregular lines, and then in streams. Not one-twentieth of them could gain admission to the hall, but they stood outside the windows of the House of Representatives, and the streets were impassably blocked. Clark did not appear at the legislative hall, but John B. Wellcome, Charlie Clark, A. J. Steele, John S. M. Neill, and A. J. Davidson were there. The joint session met, the Senate filing in as the hour of ten arrived.

The first order of business after the reading of the minutes

was the balloting for Senator. The roll was called amid breathless excitement, and the same vote was recorded as on the previous day. Then for the first time in the session a second ballot was demanded. E. C. Day, the leader of the Clark forces on the floor, moved that the assembly take a second ballot. State Senator Stanton, of Cascade, a Conrad Democrat, moved as a substitute that the joint assembly dissolve for the day. The clerk called the roll on the substitute, and it was lost by thirteen votes. The Clark forces had won their first open victory during the session. The roll on the second ballot then began. . .

When the name of State Senator John H. Geiger, who had been seated in the place of Whiteside two days before, was called, he rose from his seat and marched to the space in front of the Speaker's desk. Geiger was the member who afterwards admitted he had found an envelop containing $1,100 in his room which had been thrown over his transom during the night. His was the first Republican name on the roll, and his action would determine whether the Republicans had gone over to Clark or still stood true. Geiger's hair had been freshly oiled and plastered down, and he had all the appearance of one who realized he was to play a rôle that would become historic.

"Before casting my vote, I would like to have your attention for a few moments," he said. "I will not attempt to make any speech — If I wanted to I could not do it. But I realize that what is taking place in this, probably the most extraordinary assembly that has ever assembled on the American soil, is a grave and serious thing. I have studied this matter over and have come to a conclusion of my own. I stand here under peculiar circumstances. I am proud to say I belong to the minority of this body. The first vote I cast in this assembly, I cast for what I considered one of the leading young war-horses of the Republican party; but now the time has arrove — (laughter and shouts) — arriven — (uproar of laughter, after which Geiger desisted from the attempt to gather up his scattered sentence). I believe when I cast my vote I am only doing what I ought to

do, and I say to you now, and I defy the wretch or whoever he may be, man, woman or child (continued laughter), that I am about or going to be doing otherwise. I say to you, gentlemen, that I am doing this with hands clean, pockets empty (Geiger dramatically tapped his pockets amid increasing volleys of laughter) and conscience clear, and I am also doing it at the mandate and request of the Republican caucus, in which I did not vote. I now cast my vote for W. A. Clark, of Butte."

Geiger closed his speech amid applause, hisses, and cries of 'traitor.'

When the name of Marcyes, whose vote had been negotiated for $10,000, was called, he read a petition, signed, he announced, by many Republicans of his county, praying him to vote for W. A. Clark. . .

Representative E. D. Matts was next on the roll-call. In the legislature of 1893, he had eloquently denounced Clark as a bribe-giver. So far he had not once spoken during the session. As he rose everyone gazed expectantly in his direction.

" I have refrained from saying anything upon this contest during the entire session," he began, " and my sole reason has been that it would be utterly futile for anyone to talk upon the question of bribery if the men are here to sell themselves. There has been but one practical question, and that is: How many men are purchaseable in this legislative assembly at any price? I did not think there were as many as there are. I have always opposed the election of Mr. Clark because I believe him to be a bribe-giver; because his methods are vile and venal. . .

" You have not heard one third of the testimony. You will not listen. There is evidence connecting many members of this body directly with the crime of bribery. This must be exploited to the world, and the honor, the integrity and the credit of the State must be disgraced by such investigation. I am sorry to see this man go to the Senate of the United States, like Richard the Third, over the bodies of disgraced men. I am sorry it is

necessary for the manhood of Montana to be dishonored in order that any man may attain his end."

As the names of the various members were called, applause and hisses were heard. The excitement became intense. Charges of bribery were bandied back and forth upon the floor. The presiding officer rapped again and again for order, but in vain. As the men voted they were hissed and in one or two cases the price the voter had received was shouted at him in round figures. . .

The name of the Speaker of the House, Henry C. Stiff, was called. Stiff said:

"I am not so vain as to suppose that anything I may say at this time will change the result of this ballot. I do not believe if an election is declared here to-day it will be a valid election. I know there are some men here who are honestly casting their ballots for William A. Clark, — some of the Lewis and Clark delegation, — because of the unquestioned fact that the sentiment of this county, whether it be right or wrong, is in favor of his election. There are others voting for him, no doubt, because of their association with him in years long gone by, when they knew him to be a better man than he is to-day. Those gentlemen are so fearfully in the minority that they can hardly be taken into consideration. The question has been asked on this floor and elsewhere in this city: How do you actually know that bribery has been resorted to in this election? I say that I know this much: the only reason that I myself am not casting my vote under a bribe is because I refused to accept it — more money than I ever expect to have. All the millions that W. A. Clark possesses, in the face of these facts, could not induce me to cast my ballot for him. I can face my constituency and say that corruption, the gross corruption of this legislature, has never touched me."

The roll-call was finally finished and the clerk announced the vote for Clark as fifty-four. Four of the Republicans remained true. Eleven had gone over to Clark, and his election was

declared by the presiding officer. Then came one wild, prolonged cheer from the galleries, and the crowd filed into the street.

Helena turned out in force that night to celebrate the success of her candidate. Handbills were distributed during the afternoon. They read:

THERE WILL BE A HOT TIME. GRAND CELEBRATION TONIGHT TO ENDORSE THE ELECTION OF HON. W. A. CLARK TO THE UNITED STATES SENATE. PROCESSION. FIREWORKS. MEETING AT THE AUDITORIUM. EVERYBODY WELCOME.

At eight o'clock, the procession formed on upper Main Street, and soon after started on its march. For days the saloons and hotels of Helena had been ordering by telegraph quantities of champagne from St. Paul, Minneapolis, Spokane, Seattle, Portland, and San Francisco. All during Saturday afternoon and night most of the bars of Helena were free to the populace and no one was allowed to order anything but champagne. Clark's champagne bill alone for that night was said by one of his leaders to be $30,000.

Forty-seven votes had been procured within eighteen days at a total cost of $431,000, not including $30,000 turned over to the State Treasury by Senator Whiteside. The memorial which was afterward addressed to the United States Senate charged that:

"For the purpose of securing the support of members of said legislative assembly to vote for and elect said William A. Clark, William A. Clark paid to C. C. Bowlen the sum of $10,000; to Jerry Connolly, $5,000; to Thomas P. Cullen, $15,000; to C. O. Gruwell, amount unknown; to W. J. Hannah, $15,000; to S. S. Hobson, $50,000; to A. W. Mahan, $10,000; to Samuel L. Mitchell, $25,000; to Ben D. Phillips, $25,000; to W. E. Tierney, $15,000; to D. G. Warner, $15,000; to W. W. Beasley, $10,000; to Powell Black, $5,000; to J. H. Geiger, $15,000; to Stephen Bywater, $15,000; to W. C. Eversole, $10,000; to

B. J. Fine, $10,000; to Robert Flinn, $10,000; to H. H. Carr, $6,000; to J. H. Gillette, $10,000; to H. M. Hill, $10,000; to A. J. Jaqueth, $10,000; to Dr. J. H. Johnson, $5,000; to F. W. Kuphal, $4,000; to W. H. Lockhart, $5,000; to C. C. Long, $10,000; to T. H. Luddy, $10,000; to G. W. Magee, $17,000; to G. F. Marcyes, $15,000; to H. W. McLaughlin, $20,000; to E. V. More, $10,000; to L. C. Parker, $10,000; to R. M. Sands, $15,000; to M. Shovlin, $7,000; and to E. P. Woods, $7,000."

That the following sums were offered to other members of the legislature:

"To J. T. Anderson, $25,000; to J. R. McKay, $15,000; to G. H. Stanton, $10,000; to Henry C. Stiff, $20,000; to E. H. Cooney, $20,000; to H. A. Gallwey, $10,000; to Edwin Norris, G. T. Paul, and D. E. Metlin, jointly, $50,000; to T. F. Normoyle, $15,000; to P. G. Sullivan, $15,000; to R. J. Watson, $10,000; and to W. J. Bonner, $10,000. . ."

The legislators went down one by one, were fought for man by man. This man-hunting had its intoxication, and the chase once begun, it made its own impetus and developed into a kind of frenzy. If a man had a weakness in his nature or an exigence in his circumstances, Clark's generals found it. His debts, his indiscretions in conduct, his best sentiments, even, were turned into effective weapons against him. His business was threatened; his friendships were menaced; his wife, his sister, and even his mother were often made intercessors for his tempters. His old associates, his creditors, his family doctor, were put upon his trail.

The emotional strain brought to bear on men was so heavy, the promises held out to them were so alluring, and the reward of honesty seemed so bleak, that no anchor could hold a man except the needs of his soul. If he lived by bread alone, he went with the wind.

3. WHY WE SHOULD HAVE POPULAR ELECTION OF SENATORS [1]

It is generally accepted that we have outgrown the provisions of the Constitution on the election of senators. As is usually the case with Anglo-Saxon peoples, when institutions outgrow laws there is a development which while keeping the form of the old law changes the content of the rule. Such a change has occurred in the election of the President, a similar one is in process in the election of United States senators.

How senators shall be chosen, has become a question which the people of the United States must frankly face. For, that the phrases of the Constitution have long since ceased accurately to describe, still less to determine, the process of their election, no one can doubt who has noted how senators in recent years have reached their office, or who has grasped the import of the movement, which, during the past thirty years, has taken on different forms, has employed different means and methods, but has ever kept the same spirit and aim — a determination that the Senate of the United States shall be made responsible to the people.

The route first attempted was by way of an amendment to the Constitution, providing for the election of senators by the direct vote of the people. Only under urgent prompting from outside did Congress accord much attention to this project; for years it received little more than perfunctory lip-service; yet, so insistent became the demand, that five times and by ever-increasing majorities, the House of Representatives has passed a resolution proposing such an amendment. But all progress toward the goal by this route has always been blocked by the Senate's stolid resistance. In despair of success upon this line, recourse has been had to the optional, but hitherto untried, method of proposing amendments; state legislatures have been

[1] Haynes, G. H., *The Election of Senators*. Henry Holt & Co., New York, 1906; p. 259 *et seq*. Reprinted by permission.

calling upon Congress to summon a convention for the express purpose of initiating this amendment. In one form or another, the legislatures of thirty-one States — more than the full two-thirds prescribed by the Constitution — have communicated to Congress their formal approval of the proposed change in the Constitution; indeed, if the votes in the House be taken as a fair representation of the will of the people in their constituencies, then only two States in the Union have failed to give their indorsement. Along this line, then, the movement has reached a point where it needs but the putting of these requests into a common form and the marshaling of this scattering fire of resolutions into one concerted volley of demand, to constitute a mandate which the Constitution gives Congress no warrant but to heed. That the House would offer no obstruction, every precedent makes clear. Would the Senate still demur, and thus invite disaster upon itself?

Meantime, a vast deal of ingenuity has been devoted to attempts to reach popular control of senatorial elections by some other route than the amending of the Constitution. While the form of election by the legislature is retained, its spirit has been radically changed. There is not a State in the Union to-day where members of the legislature proceed to the election of a senator with that enlightened independence, that freedom of individual discretion in the choice from which the fathers anticipated such beneficent results. Everywhere the legislators approach the task under the dominance of party, and in every State where one well-disciplined party is in power, the result of the election is a certainty even before the legislature convenes. Not only has party spirit claimed this election for its own, but the party's choice for senator is often made before the members of the legislature are elected, and is obtruded upon that body by the state convention. Already, in about a third of the States, either under party rules, or in accordance with the explicit provisions of state law, direct primaries name the candidates, and wherever a strong party is supreme, this nomination is tanta-

mount to an election. Even in the most conservative States, the movement for the direct primary is making distinct progress. In four States, provision is made for a popular "election," carried out under the supervision of officials, not of the party, but of the State; an election as complete in all its details and formalities as is that of the governor, yet which is as void of legal power to bind the legislature in the real election of senator as would be the resolutions adopted by a boys' debating society.

What, then, is the outcome to be? That depends not a little upon the temper and action of the Senate itself. If Senators have foresight enough to discern the cloud while it is yet but the size of a man's hand, the gathering tempest of discontent may be averted. For, in comparison with a rule-ridden House that has ceased to be a deliberative body, a Senate that gave evidence of feeling itself responsible to public opinion, and of striving to discover and serve the country's broader interests, might so win the people's confidence that agitation for change in its mode of election would lose its force. But is legislative election under present conditions calculated to yield a Senate capable of such self-regeneration? If, on the other hand, the Senate continues for a few years more arrogantly to refuse the people an opportunity to pass upon the mode of their election; if, meantime, relying upon the impregnable defenses built about their office by legislative election, senators persist in neglecting or perverting measures of the utmost public concern, while not a few of them are devoting their best energies to the protection of private interests; if state legislatures, heedless of the earnest and manifold efforts made by the people to bring them to a sense of their high responsibility to the State in the selection of senators, persist in using their legal freedom of choice, not for the selection of the best men, but of men whose presence in the Senate is a disgrace to the State and a menace to popular government — then the new century will still be young when the people will find themselves forced to make choice between two alternatives; either they must redouble their efforts to force the new

wine of democracy into the old bottles of the elective process prescribed by the Constitution, or, frankly casting aside that ancient mode of election as outworn, for better, for worse, they must take the choice of senators into their own eager, strong, but unskilled hands. . .

The grounds which the framers of the Constitution advanced for their belief that the election of senators by legislatures would produce beneficent effects upon the Senate as a lawmaking body have for the most part become obsolete. Legislative election in other departments has passed entirely out of vogue and out of practice. It was not to be thought of that the framers of the constitution in the latest great federal state, the Australian Commonwealth, would follow ancient American precedent in this regard. If it is claimed that the change to popular election would remove a great bulwark against centralization in the organized resistance of the state legislatures, the reply is that no other influence has conduced so directly to the subordination of state and local government to the national party organizations as has this process of electing senators, and legislatures thus dominated are little likely to impose sentiments opposed to centralization upon the senators of their choice. The protest that under popular elections the Senate would fail to secure representation of the States as such, is academic and fallacious. The state legislature is but the agent; the body of voters, the principal. The governor personifies the State in most of its dealings with other States and with the national government; he certainly is no less the representative of the State by virtue of his deriving his authority directly from the people than he would be if he were elected by the legislature. No logical principle underlies the assumption that only election by the legislature can authorize a man to represent the statehood of Massachusetts, or of New York, in the Senate of the United States.

As to the improvement which popular election would bring to the quality of the Senate, it is best not to entertain too optimistic anticipations. It cannot be denied that the lowering

of the tone in the Senate in recent years is not to be attributed solely to the method of election — which in form has remained unchanged — but to general influences which have lowered and commercialized American politics throughout the system. Popular elections would present no insuperable barrier to the demagogue and to the corruptionist. Indeed, it is a debatable question, whether he would not find his path easier and more direct than at present. Moreover, the shortening of senatorial careers — which the history of other elective offices shows would be an almost inevitable consequence of popular election — would tend seriously to impair the Senate's prestige and power. The chief grounds for hope that popular election would, nevertheless, improve the tone of the Senate, are three: (1) No candidate could secure the election unless he possessed the confidence and could enlist the support of a plurality at least of all those sufficiently interested to take part in a great national election. (2) In the openness of the direct primary, and in the publicity for the weeks preceding a popular election, the people would have ample opportunity for passing a far more correct judgment upon senatorial candidates, than is possible in the murky atmosphere which often surrounds an election in the legislature. At present, the case is closed as soon as a candidate, who may never have been thought of before, can negotiate a majority from some few score of legislators; under popular elections every candidate's record and qualifications would be under discussion for weeks before the election, and if the popular verdict proved to be not in accord with the evidence, the blame could be shifted by the voters upon no one else. (3) Although the phrase-maker, the demagogue, or even the corruptionist or corporation tool, might capture a seat in the Senate, democracy would learn valuable lessons from such betrayals of confidence, and would correct its mistakes with more promptness and permanence than would a state legislature.

The decisive advantages of the change to popular election of senators, however, would be found in its effects, not upon the

federal government, but upon the individual States. However plausibly the apologist for the present system may argue that this very method of election by legislatures has remained unchanged since the time when it produced ideal results, and that, therefore, the causes of the present abuses must lie deeper than the mere mode of election, he cannot deny that our state legislatures have sunk to a deplorably low level, and that one of the most potent causes of this deterioration which has unfitted the legislatures for the performance of this function, by what may seem like a paradox, has been the very exercise of it. The fact that this election of an important federal official is devolved upon the members of the state legislature blurs the issues in the voter's mind, distorts his political perspective, makes him tolerant of much inefficient legislative service on the part of the man who will vote for his party's candidate for the Senate. To the legislature, as a body, it brings what is liable at any time to prove a task as difficult and distracting as it is incongruous with normal legislative work; to the State it brings interruption, it may be prevention of needed legislation, the domination of all issues by the national political parties and the tyranny of the boss, who almost inevitably seeks to impose either some tool or his own venal, or, at best, narrowly partisan, self upon the commonwealth, as the "representative of its statehood" in the United States Senate. To be rid of this would be an achievement well worth the struggle, the earnest of far greater progress in the future.

4. THE OREGON METHOD OF ELECTING UNITED STATES SENATORS [1]

Oregon has adopted an ingenious plan by which the election of senators is made practically a popular one. Under this system it has even occurred that a legislature controlled by one party has elected a senator of the opposite party who had received the support of the people at the previous election.

[1] Bourne, Jr., J., "Popular Government in Oregon." *Outlook*, Vol. 96, p. 324 *et seq.*, Oct. 8, 1910.

Every candidate for the legislature may "subscribe to one of two statements, but if he does not so subscribe he shall not on that account be debarred from the ballot. It will be seen, therefore, that three courses are open to him. He may subscribe to Statement No. 1, as follows:

I further state to the people of Oregon, as well as to the people of my legislative district, that during my term of office I shall always vote for that candidate for United States Senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a Senator in Congress without regard to my individual preference.

Or he may subscribe to Statement No. 2, as follows:

During my term of office, I shall consider the vote of the people for United States Senator in Congress as nothing more than a recommendation which I shall be at liberty to wholly disregard if the reason for doing so seems to me to be sufficient.

Or he may be perfectly silent on the election of United States Senator. It is entirely optional with the candidate.

The law further provides that United States Senators may be nominated by their respective parties in the party primaries, and the candidate receiving the greatest number of votes thereby becomes the party nominee. Then, in the general election the party nominees are voted for by the people, and the individual receiving the greatest number of votes in the general election thereby becomes the people's choice for United States Senator.

Notwithstanding that our primary election law embodying these statements, particularly Statement No. 1, was passed by a popular vote of approximately 56,000 for to 16,000 against, the opponents of the law charged that the people did not know what they were doing when they voted for it. Therefore the advocates of the election of Senators by the people and of the enforcement of Statement No. 1 submitted to the people under the initiative in 1908 the following bill:

Be it enacted by the people of the state of Oregon:

Senatorial Elections

Section 1. That we, the people of the state of Oregon, hereby instruct our Representatives and Senators in our Legislative Assembly, as such officers, to vote for and elect the candidates for United States Senators from this State who receive the highest number of votes at our general elections.

Although there was no organized campaign made for the adoption of this bill other than the argument accompanying its submission, while the opponents of the primary law assailed it vehemently, the basic principle of Statement No. 1 and the election of United States Senators by the people were again indorsed by the passage of the bill by a popular vote of 69,668 for it to 21,162 against it, or by nearly three and one-half to one.

I may here give a concrete illustration of this law's operation. Both my colleague, Senator Chamberlain, and myself were selected by the people and elected by the Legislature under the provision of this Act. Opponents of popular government, and especially of the election of United States Senators by a direct vote of the people, have bitterly assailed Statement No. 1 of our law because a Legislature overwhelmingly Republican elected my colleague, who was a candidate selected by the Democratic party and nominated by the whole electorate of the State as the people's choice of our State for United States Senator. Upon reflection I think every intelligent man who is honest with himself must concede that this fact, instead of being the basis of a criticism, is the highest kind of evidence as to the efficacy of the law, and every advocate of the election of United States Senators by a popular vote must realize that Oregon has evolved a plan, through its Statement No. 1 (provision of its primary law), wherein, in effect, the people enjoy the privilege of selecting their United States Senators, and, through the crystallization of public opinion the legislative ratification of their action.

The Oregon Legislature consists of ninety members, thirty in the Senate and sixty in the House, forty-six making the necessary majority on full attendance for the election of United States

Senator. Fifty-one members out of ninety of the Legislature which elected my colleague, Senator Chamberlain, were subscribers to Statement No. 1, making on joint ballot a majority of six out of a total of ninety members. All of these fifty-one members subscribed to Statement No. 1 pledge voluntarily, and it was so subscribed to by them from a personal belief in the desirability of the popular election of United States Senators and for the purpose of securing for themselves from the electorate preferment in the election to the office sought; the consideration in exchange for such preferment was to be by them, as the legally constituted representatives of the electorate in their behalf, the perfunctory confirmation of the people's selection of United States Senator as that choice might be ascertained under the provisions of the same law by which the legislators themselves secured nomination to office.

To further illuminate the situation, I will state that in the primaries held in April, 1908, H. M. Cake received the Republican nomination for United States Senator, and my colleague, Senator Chamberlain, then Governor of the State, received the Democratic nomination for United States Senator. At the general election in June Senator Chamberlain defeated Mr. Cake, notwithstanding the State was overwhelmingly Republican, thereby developing from the Democratic candidate into the people's choice for United States Senator. The normal Republican majority in Oregon, I think, is from 15,000 to 20,000. With full recognition of Governor Chamberlain's ability and fitness for the office, the fact that for nearly six years he made the best Governor Oregon ever had, and considering that undoubtedly he is the most popular man in our State, I deem it but just to the law, and a proper answer to the criticism of enemies of the law that it destroys party lines and integrity, to state that in my opinion, Senator Chamberlain received the votes of several thousand Republican enemies of the law, who believed that in selecting Governor Chamberlain, a Democrat, they would prevent a Republican Legislature from ratifying the people's selec-

tion, obeying the people's instructions, and electing as United States Senator the individual, regardless of party, that the people might select for that office. Thus they hoped to make the primary law and Statement No. 1 odious, and sought to create what they thought would be an impossible condition by forcing upon a Republican Legislature for confirmation the popularly designated Democratic candidate for the United States Senate. They failed to realize that, greater than party, and infinitely greater than any individual the people's choice becomes a representative of the principle and of the law, that the intelligence and integrity of the whole electorate of the State, as well as the integrity and loyalty of the members of the Legislature, were at stake, and from any honorable view-point not only would the mere intimation of the possibility of the Legislature, or any member of the Legislature, failing conscientiously to fulfill his pledge or loyally to obey the instruction of the people be an insult to the individual members of the Legislature, but it would also be an insult to the intelligence, independence, and patriotism of the Oregon electorate to intimate that they would permit such action to go unnoticed or without holding the culprit to a rigid responsibility for his treason.

No oath could be more sacred in honor, no contract more binding, no mutual consideration more definite, than is contained in this Statement No. 1 pledge, and no parties to a contract could be of more consequence to government and society than the electorate upon the one side and its servants upon the other. Under the United States Constitution there can be no penalty attached to the law. The legislator breaking his sacred pledge cannot be imprisoned or fined, hence he is doubly bound by honor to redeem his voluntary obligations. Yet there were efforts made to dishonor our State and our public servants. But, although the greatest possible strain was placed upon our law, to the credit of fifty-one subscribers of Statement No. 1 in that Legislature be it said that every one of those subscribers voted in accordance with his solemn obligation. But, notwithstanding

the people of the State had passed under the initiative the bill I have referred to instructing all the members of the Legislature to vote for the people's choice for United States Senator, not a single member of the Legislature obeyed said instructions except the Statement No. 1 subscribers.

VI. Elections to the House of Representatives and to the State Legislature

1. The Abuse of Apportionments and Single Member Districts [1]

Splitting up our voting population into small constituencies has given us representation of all districts, but has often resulted in the misrepresentation of public opinion. The evils of the old general ticket system by which a bare majority was enough to give a party all the representatives as a rule have been removed by the district system. On the other hand it happens occasionally that a minority of the electors get a majority of the representatives. Neither the old system nor the new gives true party representation.

A very apparent weakness and injustice of the district system is the opportunity it gives a majority party to crush out and disfranchise the minority. This is seen flagrantly in the "gerrymander." But, even where the system is not thus abused, it is almost wholly a matter of chance whether the opinions of the people are justly expressed or not. This danger was not imminent under the earlier conditions of representation, as has already been shown, when electoral districts were natural units and the problem of representation was the federation of local communities. But now that party lines are drawn through the midst of every community, it nearly always happens that one party gains in the elections an unjust proportion of representatives at the expense of others. From the theory of the matter it is possible to exclude minority parties altogether, and to give the entire

[1] Commons, J. R., *Proportional Representation.* Macmillan, New York, 1907; p. 48 *et seq.*, p. 80 *et seq.*

legislative body to the majority. Suppose a legislature to be composed of forty members elected from forty districts, and that the popular vote of the political parties stands respectively 120,000 and 100,000. If the districts are so arranged as to have 5,500 votes each, and the parties happen to be divided in the districts in the same proportion as at large, we should have in each district a vote respectively of 3,000 and 2,500. All of the forty candidates of the majority would be elected, and the minority wholly excluded. An extreme result like this seems improbable, but it sometimes occurs.

Again, it may happen, and often does, that a minority of the popular vote obtains a majority of the representatives. In the case assumed, parties may have been divided in the several districts as follows: —

Party A

Majority of 100 in 25 districts, 2,800 × 25 = 70,000 votes.
Minority of 1,500 in 15 districts, 2,000 × 15 = 30,000 votes.
100,000

Party B

Minority of 100 in 25 districts, 2,700 × 25 = 67,500 votes.
Majority of 1,500 in 15 districts, 3,500 × 15 = 52,500 votes.
120,000

In this assumed case, Party A, with a total of 100,000 votes, obtains twenty-five representatives; while Party B, with a total of 120,000 votes, obtains only fifteen representatives.

Where a system offers in theory such fruitful opportunities, it is too much to expect party managers to refrain from using them. Consequently, the district system, combined with party politics, has resulted in the universal spread of the gerrymander. It is difficult to express the opprobrium rightly belonging to so iniquitous a practice as the gerrymander; but its enormity is not appreciated, just as brutal prize-fighting is not reprobated, pro-

viding it be fought according to the rules. Both political parties practise it, and neither can condemn the other. They simply do what is natural: — make the most of their opportunities as far as permitted by the constitution and system under which both are working. The gerrymander is not produced by the iniquity of parties, it is the outcome of the district system. If representatives are elected in this way, there must be some public authority for outlining the districts. And who shall be the judge to say where the line shall be drawn? Exact equality is impossible, and who shall set the limits beyond which inequality shall not be pressed? Every apportionment act that has been passed in this or any other country has involved inequality; and it would be absurd to ask a political party to pass such an act, and give the advantage of the inequality to the opposite party. Consequently, every apportionment act involves more or less of the gerrymander. The gerrymander is simply such a thoughtful construction of districts as will economize the votes of the party in power by giving it small majorities in a large number of districts, and coop up the opposing party with overwhelming majorities in a small number of districts. This may involve a very distortionate and uncomely "scientific" boundary, and the joining together of distant and unrelated localities into a single district; such was the case in the famous original act of Governor Gerry of Massachusetts, whence the practice obtained its amphibian name.

But it is not always necessary that districts be cut into distorted shapes in order to accomplish these unjust results. A map of all the congressional and legislative districts of the United States would by no means indicate the location of all the outrageous gerrymanders. In fact, many of the worst ones have been so well designed that they come close within all constitutional requirements. The truth is, the district system itself is so faulty that constitutional restrictions cannot correct it. The national Congress has attempted to do so by requiring the districts for congressional elections to be compact and of contiguous

territory, and of nearly equal population. But the law is everywhere disregarded. Parties are compelled to disregard it, for a gerrymander in a Democratic State can be nullified only by a gerrymander in a Republican State.

As a result of the district system, the national House of Representatives is scarcely a representative body. . .

Perhaps, taking the nation as a whole, the gerrymanders of the United States in congressional elections do not affect the average result; since, as already shown, both parties enact them, and the work of a Democratic gerrymander in one State is offset by that of a Republican gerrymander in another.

State legislatures, on the other hand, show greater inequalities, seeing that the party in power outlines the districts for the entire constituency, and there are no offsetting gerrymanders. . .

We have seen how unequally parties are represented in the city, State, and nation. Our representative system was contrived to represent not parties, but sections. The efforts toward its improvement have been directed not toward equality of party representation, but equality of district representation. Congressional statutes and State constitutions require the districts to be of "equal" population. But this is not enforced. South Carolina has a "white" district as low as 134,369 (Census 1890); but the sole "black" and Republican district, the seventh, contains 216,512 population. In Texas the districts range from 102,000 to 210,000; in Kansas from 167,000 to 278,000; and in Pennsylvania from 131,000 to 310,000 (both extremes in the city of Philadelphia). In Illinois in 1892 the four Chicago districts had an average population of 297,980, while the sixteen country districts averaged only 164,914.

State and municipal representation is still more unequal. In New York City the State assembly districts are identical with the aldermanic districts. Says the Report of the New York Senate Committee on cities: "in the common council, as well as in the legislature, a voting constituency of 7,000 has the same representation as a like constituency of 24,000. The principle

of numerical equality, therefore, finds no application whatever in the common council of New York City. The same may be said of the principle of locality representation. The interests of the first and second districts are in all things practically alike; the total vote of the two districts is 14,498. The interests of the twenty-third district are in many regards distinct from those of the first and second. . .

We have now been able to follow the various evil phases of recent American political life directly or remotely to their root in the system of electing single representatives from limited districts, — a system which we have inherited unchanged through six centuries of political and social evolution. At the present time, when political parties based on social questions divide the people and seek representation, we are using a system of representation based on locality. The political parties inevitably seize upon this machinery and use it for party ends. Thus violently distorted, it represents neither sections nor parties. Instead, it has divided the people in every district into two camps, each dictated by its own party machine and spoilsmen.

2. GERRYMANDER OF STATE LEGISLATIVE DISTRICTS [1]

Every State legislature which makes a redistribution of legislative or congressional districts is under a great temptation to use the opportunity to strengthen the party position. By putting sections strongly in favor of the opposition into one district, the chance of defeat of the majority in the remaining districts may be lessened — or a small majority of the opposition in one district may be overcome by adding to it a few townships strongly of the party of the majority. The following extract shows the conflicting interests at work in a redistribution of State legislature districts.

MR. SPEER. The proposition reported by your Committee on Apportionment increases the Senate from thirty-two to fifty members and apportions the districts so that thirty-two will be

[1] *Revised Record of the Constitutional Convention of New York.* 1894; Vol. III, pp. 1083, 1162; Vol. IV, p. 34 *et seq.*

Republican and eighteen Democratic, according to the approved estimates of the experts of your Republican majority, as published in the *New York Press*, a Republican organ. The assembly is increased from 128 to 150. Of this 150, ninety-one are to be Republicans and fifty-nine Democrats. Each House will be Republican by over three-fifths. This apportionment is of such a nature that should the Democrats carry the State by a majority of 120,000 they would not be able to control both Houses of the Legislature.

Then you adopt the English idea, the plan on which members of Parliament were elected in England's most corrupt days, of giving representation to counties irrespective of population. What is there sacred about county lines that you should so insist upon them in your proposition and report? The county of Putnam has a population of 13,325, a third of the number to entitle it to a Member of the Assembly, still you give Putnam county an Assemblyman. Is this because Putnam county is Republican? Schuyler county has 16,326 population, less than half the ratio you have fixed of 38,606. Is it to have an Assemblyman because Schuyler county is Republican?

You seek to appeal to prejudice to array the rural counties of the State against the cities. You aim at arousing the agricultural interests against the commercial and industrial. What an appeal! What a spectacle you are making, not only to the residents of the cities, whom you chain hand and foot, but to the rural counties, whom you ask to vent on the cities the prejudice which you seek to arouse. Let us analyze this work of adroit partizanship which you have devised. You take the State Senators of 1892, with the citizen population of the State, 5,790,865, and with fifty Senate districts make your ratio 115,817. On the basis of last fall's vote, it will require 28,926 Democrats to elect a Democratic State Senator and only 17,062 Republicans to elect a Republican State Senator. Three Republicans will have as much representation as five Democrats. Such an apportionment is a work of art.

Taking your own figures as printed in your report, Document No. 65, let us see where the districts which have more than the ratio, and where the districts which have less. In Kings county you have 58,264 citizens left over, enough to be entitled to another Senator, a robbery of one Democratic Senator in addition to your gerrymander of the Brooklyn district. In every New York City district you have exceeded the ratio and disfranchised 34,160 citizens. In Westchester county you have exceeded the ratio 13,407. In these three counties alone, all of them Democratic, your excess is over 100,000. . .

MR. MAYBEE. The basic idea of the whole scheme, the foundation upon which the whole scheme rests, is the great defect in this measure. It increases the number of Members of Assembly from 128 to 150; it increases the number of Senators from thirty-two to fifty, an increase of forty members of the Legislature, without any reason whatever. Will any gentleman tell me what good reason exists for this large increase in the membership of the Legislature? Has there been anywhere a demand for it? Have the people, by petitions, through the columns of the newspapers anywhere, made a demand for this increase? What good purpose does it subserve? The purpose of it is political, and political only. There is no reason why an Assembly of 150 members will do the business of the State any better, any more satisfactorily than an Assembly of 128 members. There is no reason why a Senate of fifty members will do the business of the State with any greater satisfaction to the people of a State than a Senate of thirty-two members.

It is a recognized principle in political history, which has become axiomatic, that the larger the constituency within a reasonable limit, the better representative will you get. This is not denied by any students of political history. This measure intends to narrow the constituencies, not to broaden them; intends to make them smaller, and not larger; and for a political purpose, and a political purpose only, contravenes the well-known theory of political history and political economy that a

large constituency is more apt to return a good member than a small one. Now, the Congress of the United States consists of about 350 members. Those members represent between sixty and seventy millions of people, and yet gentlemen upon the other side of the House say that 128 Members of Assembly are not enough in number to fitly and adequately represent about six millions of people.

MR. CHOATE. Mr. Chairman, it is not true that direct population, popular count, man for man, has ever been in this State the basis of representation in the Legislature. We are not a pure Democracy; we are not an impure Republic. We are a representative government so far as its legislative body and the dealing out of legislative powers are concerned. For the great offices of State, the Governor and other great officers, we vote man by man and the majority rules. In the highest judicial court of the State we vote in the same way, popular sovereignty, popular majority, or, at any rate, popular plurality. It has never been so, it never will be so, it never can be so, in respect to the Senate and Assembly. We must be represented by districts; we must be represented by counties; we must be represented by some form of territorial division. When my friends on this side of the chamber concede, as they must concede, that, they give away the whole of the argument which Mr. Osborn presented, based upon equal popular representation. Why, there is the little county of Putnam of his, with 13,000 people and the adjoining county of Westchester with 127,000, that, according to his theory, ought to have ten times as much. Nobody has ever dreamed under this or any other apportionment, of giving it more than three times as much.

What do the people of this State come to the Legislature for? To make laws for the whole State; to represent the whole State, and each part of the State is interested in the whole. My friend down here upon this side talked as if all the wealth accumulated in the city of New York ought to lie at the basis and foundation of apportionment. Who owns the magnificent harbor which is

the foundation of all her prosperity and those great rivers which meet to kiss each other at her door? Why, the little county of Niagara might just as well claim to own for itself the Cataract of Niagara, that other wonder of the world at the other end of the State. No, sir, they come here representing these divisions, and the first rule always has been, and always will be, I believe, that each one of these divisions, these counties which have been formed as political divisions for the very purpose of being the centres of home rule, if you please, of local government, — every one of them has the right, and the equal right; and if there were but sixty counties, if there were but sixty representatives, they must be distributed among these sixty counties, upon every doctrine that has ever prevailed in this State; and the little county of Putnam in that case would be entitled to the same number in that assembly as the great county of New York.

Mr. Chairman, if you want to go, for example, to good Democratic authority, I want to give you some on this doctrine in support of this proposition that is represented in this scheme; that is to say, that the greater the territorial extent of a little and poor county, the greater shall be its representation in the popular branch of the Legislature. Florida — is not that a good Democratic State? Did anybody ever hear of a Republican entering its borders except for the purpose of summer recreation or for the investigation of fraud? Florida says: "The representation in the House of Representatives shall be apportioned among the several counties as nearly as possible according to population; provided, each county shall have one representative at large in the House of Representatives; and no county shall have more than three representatives." Think of that.

Georgia — is not that a good Democratic State? Here are States that are all of one way of thinking. Georgia apportions her one hundred and seventy-five representatives among the several counties thus: "To the six counties having the largest population, three each; to the twenty-six counties having the next largest population, two each; to the remaining one hun-

dred and five counties, one each. After each United States census, the General Assembly may change the above apportionment so as to give to the six largest counties three each; to the twenty-six next largest, two each; but in no event shall the aggregate number of representatives be increased." Is that good Democratic doctrine?

3. THE FEDERAL LAW REQUIRING SINGLE MEMBER DISTRICTS FOR THE ELECTION OF MEMBERS OF THE HOUSE OF REPRESENTATIVES [1]

Up to 1842, the states were free to adopt any method of popular election for the choice of their representatives in the lower house of Congress. Congress contented itself with prescribing only the number of representatives to which each state was entitled. Since 1842 the election is required to be by single member districts. When the number of representatives has been cut down but the legislature has not yet redistricted the state the elections are occasionally held under the old general ticket system. South Dakota does so regularly.

CHAP. XLVII. An Act for the apportionment of Representatives among the several States according to the sixth census.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the third day of March, one thousand eight hundred and forty-three, the House of Representatives shall be composed of members elected agreeably to a ratio of one Representative for every seventy thousand six hundred and eighty persons in each State, and of one additional representative for each State having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the Constitution of the United States; that is to say: Within the State of Maine, seven; within the State of New Hampshire, four; within the State of Massachusetts, ten; within the State of Rhode Island,

[1] *United States Statutes at Large.* Vol. V, p. 491; June 25, 1842.

two; within the State of Connecticut, four; within the State of Vermont, four; within the State of New York, thirty-four; within the state of New Jersey, five; within the State of Pennsylvania, twenty-four; within the State of Delaware, one; within the State of Maryland, six; within the State of Virginia, fifteen; within the State of North Carolina, nine; within the State of South Carolina, seven; within the State of Georgia, eight; within the State of Alabama, seven; within the State of Louisiana, four; within the State of Mississippi, four; within the State of Tennessee, eleven; within the State of Kentucky, ten; within the State of Ohio, twenty-one; within the State of Indiana, ten; within the State of Illinois, seven; within the State of Missouri, five; within the State of Arkansas, one; and within the State of Michigan, three.

Sec. 2. And be it further enacted, That in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory equal in number to the number of Representatives to which said State may be entitled, no one district electing more than one Representative.

Approved, June 25, 1842.

4. CONSTITUTIONAL LIMITATIONS ON APPORTIONMENTS [1]

The Federal law requiring that Representatives should be elected from single member districts of approximately equal population has been accompanied by constitutional provisions in the states applying to both congressional and state legislative districts. The character and efficiency of those provisions is discussed below.

In order to limit the discretion of legislatures in the matter of apportionment and to oblige them to make a more equitable

[1] Reinsch, P. S., *American Legislatures and Legislative Methods.* Century Co., New York, 1907; pp. 204–213.

division of the electorate, strict constitutional provisions have in many states been adopted. A good example of a detailed regulation is found in the New York constitution of 1895 (Art. 3, Sec. 2). This constitution provides that the Senate shall consist of fifty members, the Assembly of 150; that the apportionment is to be changed by the legislature after the enumeration of 1905 and every ten years thereafter. The senate districts are to contain as nearly equal a number of inhabitants as may be; they are to be compact in form, consisting of contiguous territory. No county is to be divided save to make two or more Senate districts wholly within such county. No county is to have more than one-third of all the senators, or any two adjoining counties more than one-half. If a county having three or more senators is entitled to a greater number, the senators allotted to it shall be given in addition to the fifty already provided for. Each county, with one exception, is entitled to at least one member of the Assembly; in the counties entitled to more than one member, the Board of Supervisors or the Common Council make the apportionment. But each Assembly district must be wholly within a Senate district, and no township or city block is to be divided. Legislative apportionment is subject to review by the Court of Appeals at the suit of any citizen.

The New York Court of Appeals had before this shown itself rather reluctant to interfere with the legislative discretion in matters of apportionment. Great inequalities had existed under the later acts. Thus the act of 1879 gave one representative to Suffolk County with 50,330 inhabitants; two to Cattaraugus with only 45,737, and three to St. Lawrence with 78,014. Governor Robinson spoke of these inequalities as admitting of no apology or excuse. But he was powerless in the matter, since a veto of the law would have left the still more objectionable act of 1866 in force. Under the act of 1892 also there were some glaring inequalities; the Twelfth senate district had only 105,720 inhabitants, the adjoining Thirteenth 241,138. This time St. Lawrence with 80,679 inhabitants received only one assem-

blyman, while Dutchess with 75,078 received two, and Albany with 156,748 received four. The Court of Appeals, which was called upon to decide on the constitutionality of this act, refused to interfere with the discretion of the legislature. (People *ex rel.* Carter *v.* Rice, 135 N.Y., 473 (1892). The principle upon which the Court based its decision was stated in the following language: "The discretion necessarily vested in the legislature must be finally disposed of by it, unless there is such an abuse of that discretion as to clearly show an open and intended violation of the letter and spirit of the Constitution." The Court was also strongly impressed with questions of expedience in the situation, as is apparent from the argument in the opinion, that the effect of setting aside an apportionment act would be to cause every subsequent act to be brought before the courts for review, which might happen at a critical time; to originate the greatest confusion at the impending election with a possible total suppression of it; and at all events to continue in force an act containing greater inequalities than the one attacked. These considerations were sufficient to induce the Court to say that "only in a case of plain and gross violation of the spirit and letter of the Constitution should it exercise the power."

The Supreme Court of Illinois has been similarly disinclined to interfere with legislative apportionments. (People *ex rel.* Woodyatt *v.* Thompson, 155 Ill., 451 (1895).) It held that the courts cannot inquire into the motives which have influenced the legislature in making an apportionment. If the constitutional requirements of compactness of territory and equality of population have been applied at all, the Court will not interfere, though the nearest possible approximation to these requirements may not have been attained. The Court held that an act apportioning senatorial districts is unconstitutional, if it appears that the constitutional requirements of compactness of territory and equality in population have been wholly ignored, and not considered or applied to any extent.

But if considered and applied, although to a limited extent only, subject to the more definite limitations, the act is constitutional, although the legislature may have imperfectly performed its duty. . . . "As the courts cannot make a senatorial apportionment directly, neither can they do so indirectly. There is a vast difference between determining whether the principle of compactness of territory has been applied at all or not, and whether or not the nearest practical approximation to perfect compactness has been obtained. The first is a question for the courts to determine; the latter is for the legislature."

The Supreme Court of Kansas in an earlier case leaves considerable discretion to the legislature in the matter of apportionment. (Prouty *v.* Stover, 11 Kans., 235; 1873.) Justice Brewer says, in giving the opinion of the Court, — "An apportionment cannot be overthrown because the representatives are not distributed with mathematical accuracy, according to the population. Something must be left to the discretion of the legislature, and it may, without invalidating the apportionment, make one district of a larger population than another. It may rightfully consider the compactness of territory, the density of population, and also, we think, the probable changes of the future in making the distribution of representatives." A most extreme position was taken by the Supreme Court of Appeals of Virginia (Wise *v.* Bigger, 79 Va., 1884) in declaring that "the laying off and defining the congressional districts is the exercise of a political and discretionary power of the legislature, for which they are amenable to the people whose representatives they are." This opinion, which was given by the Court without any discussion of the question, was declared although specific constitutional restrictions upon the legislative power had been invoked.

Courts in other jurisdictions have recently taken a more decisive stand against the abuse of legislative discretion in districting the state for electoral purposes. The state of Michigan suffered a good deal from frequent unscrupulous gerrymandering,

as the constitution did not prescribe a definite period of apportionment. The Republicans in 1885, and the Democrats in 1891, in the first case upon a majority of less than 4,000 in a total vote of 400,000, so gerrymandered the senatorial districts as to yield their own party twenty-one senators and their opponents eleven. Under the apportionment of 1891, eight counties with a population of 40,000 were formed into a district having one senator, and nine adjoining counties with 97,000 inhabitants were given the same representation. Both of the acts mentioned were held unconstitutional by the Supreme Court, which decided among other things that it was not a due exercise of legislative discretion under the constitution, to give a county of less population than another greater representation, and that the discretion of the legislature must be honestly exercised so as to preserve the equality of representation as nearly as may be. (Supervisors of Houghton County *v.* Blacker, 92 Mich., 638. Giddings *v.* Blacker, 93 Mich., 1; 1892). The judges, in their written opinions, used very strong language in denouncing the practice of gerrymandering. Chief Justice Morse declared that the courts alone could in this matter save the rights of the people and assure them of equality in representation; and another justice said, "Such laws breed disrespect for all law, for law makers become law breakers."

The Supreme Court of Wisconsin has taken especially advanced ground in enforcing constitutional limitations upon the discretion of the legislature. (State *ex rel.* Attorney General *v.* Cunningham, 81 Wis., 440.) The court decided that "an apportionment act may be judicially declared void for violation of a constitutional requirement of apportionment according to the number of inhabitants, when the disparity in their numbers, in the districts created, is so great that it cannot possibly be justified as an exercise of judgment or discretion. A constitutional requirement of apportionment according to the number of inhabitants in creating assembly and senate districts, is violated by an apportionment act in which, with the average popu-

lation of 51,117 for a senate district, the number of inhabitants in the respective districts created ranges from 37,000 to 68,000; and in the assembly districts, with an average of 16,868, it ranges from 6,000 to 38,000. Such an act is not an 'apportionment' in any sense of the word, but is a direct and palpable violation of the constitution, bearing upon its face intrinsic evidence that no judgment or discretion was exercised in an attempt to comply with the constitution. The whole act must be held void if constitutional requirements are violated in the formation of some of the districts." In the second case the court decided that "any number of legislative violations of plain and unambiguous constitutional provisions regarding the apportionment of legislative districts cannot be regarded as abrogating such provisions. . . . The unnecessary inequalities under the apportionment of July, 1892, such as one assembly district having three times the population of another or one senate district having double that of another, are held to render the act invalid."

The supreme court of Indiana in the same year also announced the doctrine of a stricter limitation of legislative discretion. (Parker *v.* State, 133 Ind., 178, 1892.) It held in substance: "The legislature has no discretion to make an apportionment in disregard to the enumeration of inhabitants authorized to vote, as provided for in the constitution; and because exact equality is not possible, the general assembly is not excused from making such an apportionment as will approximate the equality required by the constitution. This rule forbids the formation of districts containing large fractions unrepresented where it is possible to avoid it, while other districts are largely over-represented. While the general assembly has much discretion in disposing of the fractions of the unit of representation, yet it is not beyond control. No scheme for senatorial districts can be lawfully devised in which a county having less than the unit of population for a senatorial district can legally be entitled to vote for two senators, where the constitutional provisions require equality in representation. A county having more than the repre-

sentative unit of population cannot be denied the right to a separate representative."

In deciding upon questions of apportionment the courts often face a difficult problem in the fact that by declaring the act under consideration void, the state is left at the mercy of still more intolerable conditions under earlier acts. In the Michigan cases of 1892, the supreme court held void not only the apportionment of 1891, but also the act of 1885, under which three elections had been held; and prescribed that election notices should be issued by the secretary of state under the old law of 1881, unless a new and valid apportionment should be made by the legislature. In the Wisconsin cases the court took cognizance of electoral conditions, but, refusing to be influenced by them, declared only the act before it invalid. It did not investigate the earlier acts as to constitutionality, although the separate opinions show that these acts were in the same class with the law held void. The court, however, did suggest action by extra session, as alternative to elections under a previous act. While the supreme court of Michigan decided the Michigan acts of 1891 and 1885 both unconstitutional, the Indiana court declared contrary to the constitution two acts of 1891 and 1879, but refused to consider the constitutionality of the act of 1885, as this question had not been brought before it. This matter was given careful consideration by the New York court of appeals, but an opposite conclusion was arrived at; the very fact that the earlier acts were also contrary to the constitution was made a reason for upholding the act before the court. Regarding this subject, Justice Peckham used the following language: (People *ex rel.* Carter *v.* Rice, 135 N.Y., 509). "If the act of 1892 is void, the act of 1879 is also plainly void and no election of members of the assembly should be tolerated under it. This might relegate the people to the act of 1866, and thus we might have an attempt at an election for members of the assembly under an act a quarter of a century old and a legislative representation of the people of that time. This would be a travesty on the laws and upon all

ideas of equality, propriety and justice. We are compelled to the conclusion that this act of 1892 successfully withstands all assaults upon it and is a valid and effective law."

In order to eliminate the evils accompanying the present system of apportionment, with its strong temptation to gerrymander, various alternative plans have been proposed. They have, however, not as yet been proven in practice to possess the remedial virtues urged in their behalf. According to the customary attitude among the people, a great deal of attention has been devoted to the effects of the present inadequate system, while comparatively little has been paid to its source. The palliatives that have been suggested include elections at large, apportionment by congressional action, cumulative voting and the quota system of proportional representation; but while admitting the special advantages of each, it is not clearly evident that any one of the proposed changes would completely bring about the desired result of fair and equal representation of interests and sections as well as of population.

5. SOME TYPES OF PROPORTIONAL REPRESENTATION [1]

If parties, not territorial units, are entitled to representation, it is essential that some electoral machinery should be adopted which will provide representation based on the relative number of votes cast by each party throughout the electoral district. This is the object of all methods of Proportional representation. Though such plans are just beginning to attract attention in the United States, they have received various applications in Europe and Australia and merit the attention of American political reformers.

Proportionalists in the recent past have had for their most formidable difficulty a want of agreement concerning the plan, method, or system to be presented in propaganda. They were agreed as to the proportional principle, but differed about proportional practise.

[1] Robert Tyson, "The Single Transferable Vote." *Equity*, Jan., 1911.

This difficulty is gradually being overcome by recent developments, and now a basis of agreement is prominently to the front, well described by the title which heads this article: "The Single Transferable Vote." It is a most happy phrase, for it covers three essentials on which a large body of proportionalists are agreed, whilst leaving room for variations in the method of transfer, so as to meet any disagreements in this respect.

The three essential points agreed upon by the great body of English-speaking proportionalists are these: (a) an electoral district from which several members are elected; (b) one final vote only for each elector; and (c) some method of transferring votes from candidates who cannot use them to candidates who can.

There are just four systems which embody these essential points. Or, to put it in another way, there are just four variations of the Single Transferable Vote. Briefly, here they are, with some short notes on each:

1. *The Hare or Hare-Spence System.* I put this first, because it is the most widely adopted in actual practise, being used in Tasmania, South Africa, Denmark and elsewhere. Ballots are marked first choice, second choice, etc., by the electors. First choices are tallied and sorted at "precincts" or "polling subdivisions." At the close of the poll, all ballots are taken to the central office. A "quota" is got on the general principle of dividing the total vote by the number of seats to be filled. Then the transfers are made on the basis of the choices marked by the electors. If a candidate has surplus votes, over and above the quota, they are evidently votes which he has no use for, and they are transferred away from him. Then the candidates weakest in votes are excluded, one by one, and their ballots transferred. This process is continued until only enough candidates remain to fill the seats. Let me repeat that all transfers are made according to the wishes of the electors, as expressed by the "choices" marked on their ballots.

It is an excellent system; its advantages are well known;

and it has worked well in practise. The objections urged against it are: (a) there is a good deal of elaboration involved in a fully satisfactory distribution of the surplus votes; (b) the ballots have all to be taken to one central point for transfer.

2. *The Schedule Plan.* This is the simplest form of the Single Transferable Vote, and I put it second because of its close analogy to the Hare system.

After nomination and before election each candidate publishes and officially files a preferential schedule, setting out those other candidates to whom he instructs shall be transferred his surplus votes, if any, or all his votes if he cannot be elected. Each elector marks his ballot for one candidate only. Returns from the precincts are sent to the central office; a quota is ascertained; and transfers are made on the same principle as in the Hare system, but on the basis of candidates' schedules, instead of according to the voter's marking of choices, which he does not do under this plan. It is suggested that provision should be made for the voter, by his ballot, to reject his candidate's schedule if he does not approve of it, thereby confining himself to a first-choice vote only, and taking the risk of that vote staying with a losing candidate.

The advantages of the schedule method are its extreme simplicity, and the fact that the ballots are not required at a central office for counting the votes.

Objections urged are (a) that the voter, not the candidate, ought to determine the transfers; (b) that the making of a preferential list would be embarrassing to candidates — and (c) that the system is nowhere in use for municipal or legislative elections.

3. *The Proxy Plan.* I give here but a mere outline. Electors mark on their ballots several candidates in the order of their choice, precisely as in the Hare system. First-choice votes are sorted and tallied at precincts. All ballots and tally sheets are taken to a central office. No quota is got, and there are no "surplus votes" to deal with. As soon as the total first-choice

votes for each candidate are ascertained, the process begins of excluding the weakest candidates, one by one, and transferring their votes according to the wishes of the electors as expressed on each ballot, until only the required number of candidates remain. On these candidates have been concentrated all the votes cast; some having received, of course, many more votes than others. Then each candidate is empowered, on a division in council or legislature, to cast as many votes as have been cast for him at his election.

Advantages of the proxy plan are its simplicity and that it may operate to give representation to more groups of electors than the other plans.

Objections are: (a) that mere votes on a division are not the only thing required, but personnel counts also; and (b) that the system has never been tried for municipal or legislative elections.

4. *The Single Vote Free List.* This plan comes under the full scope of our heading only by reason of an indirect transfer. The candidates are arranged on the ballot in party lists, and each voter has one vote only. I will not go farther into detail, because the general plan of list systems is fairly well known, . .

The advantages are, considerable simplicity; a compliance with present electoral habits of the United States; the ballots need not be taken to a central office for the purpose of the final count; its successful use in Belgium for six successive parliamentary elections; and its advocacy by the People's Power League of the state of Oregon. An ingenious improvement of detail has been suggested in Oregon, which would remove the difficulty heretofore experienced in dealing with the fractions of quotas which arise in dividing each list by the quota.

The objections urged against all list plans are: (a) they strengthen and perpetuate the permanent partizan party feeling; (b) they give party organizations too much power in nominations; and (c) they afford too little scope for the preferences of the individual elector in his choice of a candidate.

General Comment. There is no doubt that so far the Hare system is ahead in the race, not only by reason of its use in Denmark, Tasmania and South Africa, but because it is being pushed by a powerful and active organization in Great Britain, which has held three successful test elections on a large scale. Another thing which helps the Hare plan is its peculiar adaptability, in its simpler form, for use in meeting-room elections of clubs, associations, etc. I confess to being much attracted by the simplicity of both the Schedule System and the Proxy Plan; and I should very much like to see one or both tried on a large scale.

VII. Party Organization

1. Party Regularity [1]

The importance of securing united action is so great that the party is able to override or at least silence any objection within the ranks after the policy has been determined upon by the majority, or too often by the leaders who assume to stand for the majority. Only in extraordinary cases will the rank and file break away from the party with which they have become accustomed to vote.

Since it lacks a true representative character, and its concern in public affairs is at bottom a business pursuit carried on for personal gain and emolument, the service which party performs in executing the behests of public opinion and in carrying on political development must be an incident in its ordinary activity. That this is the case all observation confirms. It is a common remark, that all political parties seem to care for is the possession of the offices, and that they are willing to shift and change their principles as much as need be in order to win. Talleyrand's cynical remark, that a man ho is always true to his party must be prepared to change his principles frequently, is peculiarly applicable to American politics. Party effrontery is carried to such a pitch that in one state a party may take up and energetically advocate doctrines, which the same party in another state will be just as actively engaged in denouncing and opposing. So accommodating is party policy in this respect, that state political campaigns have become tests of the public disposition, and the results of such experimentation are studied for data upon

[1] Ford, H. J., *Rise and Growth of American Politics.* Macmillan, New York, 1900; pp. 325–333.

which to base plans for the grand quadrennial adventure of the presidential election.

It therefore appears that wherein party serves public interests is in the catering to public wants and desires which every party organization must carry on to get and hold business in competition with opposing party organization. Hence party is obliged to consult public opinion and assume engagements to be carried out in the administration of public affairs. American politics are not peculiar in this respect, for that is the way in which party discharges its function wherever it carries on the government. What is peculiar to American politics is that party organization is so situated that it cannot negotiate as a principal but as a go-between. Unlike an English party, it cannot itself formulate measures, direct the course of legislation, and assume the direct responsibility of administration. All that it can do is to certify the political complexion of candidates, leaving it to be inferred that their common purpose will effect such unity of action as will control legislation and direct administration in accordance with party professions. The peculiarities of American party government are all due to this separation of party management from direct and immediate responsibility for the administration of government. Party organization is compelled to act through executive and legislative deputies, who, while always far from disavowing their party obligations, are quite free to use their own discretion as to the way in which they shall interpret and fulfil the party pledges. Meanwhile they are shielded, by the constitutional partitions of privilege and distributions of authority, from any direct and specific responsibility for delay or failure in coming to an agreement for the accomplishment of party purposes. Authority being divided, responsibility is uncertain and confused, and the accountability of the government to the people is not at all definite or precise. When a party meets with disaster at the polls, every one may form his own opinion as to the cause. It is purely a matter of speculation. The situation of affairs is one which was accurately foretold in *The Federalist.*

"It is often impossible," said Hamilton, "amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable."

As a natural consequence of the detached and subordinate position of party organization in the conduct of the government, public opinion is not concentrated upon its acts with steady scrutiny and vigilant supervision. The activity of party is largely concerned with details of its own business management, not possessing much interest for the mass of the people who have their own affairs to attend to. Its contentions are largely personal squabbles, whose political results may be very important, but which do not themselves present political issues. They are like the intrigues which used to go on among the English gentry, over court honors and official emoluments, in the Georgian era of English politics, the mass of the electorate but dimly comprehending what was going on and regarding the strife with disgust and aversion, although quickly roused to activity by issues appealing to their political instincts. The true public opinion of the nation is ordinarily in a state of suspense. The minds of people are preoccupied by too many interests to attend closely to the transactions of the politicians, and not until the issue is thrust upon the public in a definite form by some pressing emergency is the genuine expression of public opinion evoked. Meanwhile the political opinion with which party organization is concerned, and to which it defers, is that with which it comes

in contact soliciting business. The acrid and fretting humors of the body politic exert a more direct and active influence upon party behavior than the judgment and intelligence of the nation, because elements of unrest and dissatisfaction are importunate in their demands and therefore receive attention, while social interests of incomparably greater magnitude are ignored.

The readiness with which party organization lends itself to the service of temporary manias and recognized delusions proceeds from an instinct of self-preservation. Everywhere the ins are menanced by the activity of the outs, prompt to seize upon any whim, passion, or prejudice, no matter how foolish or noxious, if it can be turned to present account. Party organization, therefore, exploits outbreaks of popular folly and knavery, and caters to the prejudices of ignorance and fanaticism in a way that invests them with fictitious importance, and confers upon them inordinate legislative influence. This feature of American politics, more than any other, causes the national character to be misunderstood, and the worth of democratic institutions to be undervalued. It is inferred that public opinion in this country is subject to periodical hallucinations, that there is a popular contempt of authority, and a frequent recurrence of reckless desires to try over again the old failures, heedless of the abundant instructions of history and the warnings of our national experience. This is a mistake. Folly does not more abound, but it is magnified in force and effect by the peculiar conditions of American politics. American citizenship is probably superior in average intelligence to that of any other country. The public press, although considerate of the value of party good will to an extent that unfits it for fairly representing public opinion, must nevertheless keep that in view, since it caters to the public at large, and not merely to the fraction which busies itself with politics; and it is well known that the voice of the press is different from the voice of party on questions of public policy. Sanity and conservatism prevail in the tone of the press, even when

party organization is most supple and accommodating to the folly of the hour.

Party organization not being directly burdened by the difficulties and necessities of government feels at liberty to court public opinion in all its vagaries. Great art is employed in framing platforms so as to be susceptible to various interpretations. Concerning issues which are settled, party speaks in a clear, sonorous voice. But on new issues it mumbles and quibbles. Subdivisions of the party organization make such professions as will pay the best in their respective fields of activity. If the issue cannot be dodged, straddling may be resorted to. Declarations really incongruous in their nature are coupled, and their inconsistency is cloaked by rhetorical artifice. Sometimes such expedients are employed as making the platform lean one way and putting on it a candidate who leans the other way, or candidates representing opposing ideas and tendencies are put upon the same ticket. Such practices are results of the ordinary instincts of party in all countries, and obtain such monstrous growth in America because of extraordinarily favorable conditions. Party never commits itself to any new undertaking until it has to. In England there must be a long period of agitation and education of public sentiment before a new issue is raised to the rank of what is known as a cabinet question, but when that time arrives, party is in a position to enter into exact and specific engagements as to the disposition which will be made of it. In this country the only way in which party can be forced into such a position is through the exigencies of the national administration. Whatever may be the policy then adopted, it puts upon party the necessity of acquiescence or dissent in a way that requires a categorical response to the demands of public opinion.

In the discharge of this function national party organization claims and exercises supreme jurisdiction. When it reaches its decision, all indulgence of local heterodoxy disappears and is succeeded by a ferocious intolerance. State and local party lead-

ers must submit on penalty of excommunication. The coercive force which party organization then develops was strikingly manifested by the way in which the Democratic platform of 1896 was forced upon dissenting state party organizations. Some, which had adopted platforms antagonistic to the platform of the national party, were compelled to meet and eat their words. It is the established principle of American politics that fidelity to the national platform is the crucial test of party orthodoxy. Hence national issues are the controlling force in politics. Attempting to reform state or local politics, while ignoring national politics, is like expecting to accomplish a local purification of the atmosphere by palisading a patch of ground in a swamp. A little may be done, but not much. It follows that, in this country, — as was the case in England, — the effectual purification of our politics will begin with national politics and will spread from them to local politics.

The pliable and time-serving disposition of party, which is the natural consequence of its own anxious calculation of its business interests, prepares for its tremendous reverses. It becomes committed to methods of administration and courses of policy inimical to the public interest, so that there comes a time when genuine public opinion is roused to action with a vigor which nothing can withstand. The shelters of falsehood and the refuges of deceit are swept away, as by the blast of a hurricane, and the discomfited party managers lie choking and dumfounded in the dust and the wreckage. The readiness of the people to treat their great national parties in this way must eventually beat those parties into serviceable tools of government or break them up to make room for better material. The situation confronts political leaders with problems of party control and discipline, whose solution tends to improve the apparatus of government. The results of this tendency are already very plainly marked in the improvement of the House of Representatives; but far more extensive changes must take place in all the organs of government before the rule of public opinion is defi-

nitely established. The present inadequacy of party organization for a true representation of public opinion is so exasperating to impatient reformers that they would like to shatter it to bits; but that is not the way to better the state of affairs. Party rises to new occasions by consulting its own interests. This consultative faculty in party organization, mischievous as seems to be its irregular and irresponsible operation, is that which sustains political development, and eventually it will perfect the democratic type of government.

2. WHAT THE PARTY MACHINE HAS TO DO[1]

The enormous amount of routine work done by the party organization in the United States is done quietly and attracts but little public attention. It extends all through the year and requires organizing ability of the highest order.

In Europe a citizen rarely votes more than twice or thrice a year, sometimes less often, and usually for only one person at a time. Thus in England any householder, say at Manchester or Liverpool, votes once a year for a town councillor (if there is a contest in his ward); once in four years (on an average) for a member of the House of Commons. Allowing for the frequent cases in which there is no municipal contest in his ward, he will not on an average vote more than once and a half times each year. It is much the same in Scotland, nor do elections seem to be more frequent in France, Germany, or Italy, or even perhaps in Switzerland.

In the United States, however, the number of elective offices is so enormous and the terms of office usually so short that the voter is not only very frequently called upon to go to the polls, but has a very large number of candidates placed before him from among whom he must choose those whom he prefers. Moreover, besides voting at the regular election, he ought also

[1] Bryce, J., *The American Commonwealth.* Macmillan, New York, 1910; Vol. II, pp. 93–100.

to vote at primaries, *i.e.* to vote to select the candidates from among whom he is subsequently to choose those whom he desires to have as officers; while in many States the law now fixes the day and manner in which he ought to do so. . .

The first thing that strikes a European who contemplates the party organization which works this elaborate elective system is the great mass of work it has to do. In Ohio, for instance, there are, if we count in such unpaid offices as are important in the eyes of politicians, on an average of more than twenty offices to be filled annually by election. Primaries or conventions have to select candidates for all of these. Managing committees have to organize the primaries, "run" the conventions, conduct the elections. Here is ample occupation for a professional class.

What are the results which one may expect this abundance of offices and elections to produce?

Where the business is that of selecting delegates and, in the particular State, the selection of candidates is made by the older kind of primaries and conventions, it will be hard to find an adequate number of men of any mark or superior intelligence to act as delegates. The bulk will be persons unlikely to possess, still more unlikely to exercise, a careful or independent judgment. The function of delegate being in the case of most conventions humble and uninteresting, because the offices are unattractive to good men, persons whose time is valuable will not, even if they do exist in sufficient numbers, seek it. Hence the best citizens, *i.e.* the men of position and intelligence, will leave the field open to inferior persons who have any private or personal reason for desiring to become delegates. I do not mean to imply that there is necessarily any evil in this as regards most of the offices, but mention the fact to explain why few men of good social position think of the office of delegate, except to the National Convention once in four years, as one of trust or honour.

If on the other hand the new statutory primaries have in the particular state superseded conventions, then the attendance at these primaries and the choice of candidates there is a serious

task thrown on the voter for which his knowledge of the persons from whom candidates are to be selected may be quite inadequate. . .

The number of places to be filled by election being very large, ordinary citizens will find it hard to form an opinion as to the men best qualified for the offices. Their minds will be distracted among the multiplicity of places. In large cities particularly, where people know little about their neighbors, the names of most candidates will be unknown to them, and there will be no materials, except the recommendation of a party organization, available for determining the respective fitness of the candidates put forward by the several parties. . .

Those who have had experience of public meetings know that to make them go off well, it is as desirable to have the proceedings prearranged as it is to have a play rehearsed. You must select beforehand not only your chairman, but also your speakers. Your resolutions must be ready framed; you must be prepared to meet the case of an adverse resolution or hostile amendment. This is still more advisable where the meeting is intended to transact some business, instead of merely expressing its opinion; and when certain persons are to be selected for any duty, prearrangement becomes not merely convenient but indispensable in the interests of the meeting itself, and of the business which it has to dispatch. "Does not prearrangement practically curtail the freedom of the meeting?" Certainly it does. But the alternative is confusion and a hasty unconsidered decision. Crowds need to be led; if you do not lead them they will go astray, will follow the most plausible speaker, will break into fractions and accomplish nothing. Hence if a primary of the older type is to discharge properly its function of selecting candidates for office or a number of delegates to a nominating convention, it is necessary to have a list of candidates or delegates settled beforehand. And for the reasons already given, the more numerous the offices and the delegates, the less interesting the duties they have to discharge, so much the more necessary is it to have

such lists settled; and so much the more likely to be accepted by those present is the list proposed. On the other hand the new statutory primary intended to secure the freedom of the voter is also so complex a matter that preliminary steps must be taken by experts familiar with the law and practice governing it.

3. HOW THE PARTY IS ORGANIZED[1]

A large part of the work of the party near election time is the listing of the voters, and the establishment of their right to vote through proper registration.

Let us see how the politician goes to work to carry an election. . .

As I write, I have before me some pages from the poll-books and check-books of one of the county committees in the State of New York. Before registration day a thorough canvass is made of each election district. The names of all of the voters are arranged in these poll-books alphabetically. After the column of names comes a series of columns headed, respectively, Republican, Democrat, Prohibition, Doubtful, Post-office Address, Occupation, and Remarks. Each voter's address is taken, and opposite his name is placed a mark in the proper column showing whether he is a regular Republican, a Democrat, or a Prohibition voter, or whether he is to be considered a "doubtful." After registration day, each man who registers has his name checked in the poll-book, so that the committees of both parties have a complete list of all those entitled to vote in each district. From this book, then, a check-book is prepared. In this second book, if I take as an example the check-book of the Republican party, on each page will be arranged in the first place, alphabetically the names of all the Republicans in the district; then in a column

[1] Jenks, J. W., "Money in Practical Politics." *Century*, Vol. 44, 1892; p. 941.

below, or on another page, all those that are considered doubtful; that is, those whose politics are not known, and those whose votes it is thought possible to bring to the Republican party either by persuasion or by purchase. The Democratic committees have books similarly arranged, with the names of all the sound Democrats and of the "doubtful" . . .

On election day, then, it is an easy matter for the poll-book holder, standing by the polls, to check the name of every reliable party man as he comes to vote, and near the end of the day to find out how many men of his own party have not yet voted. He can then readily send a messenger to bring in any late or careless voters, the character of whose votes is not doubtful. The workers of each party, having thus a complete list of all doubtful or purchasable voters, will know how to handle them.

4. A DAY WITH A LOCAL POLITICIAN [1]

A party leader in a large city has numerous duties not imposed by law but which he must perform if he is to keep his party vote well in hand for the ever coming elections.

2 A.M. — Aroused from sleep by the ringing of his door bell; went to the door and found a bartender, who asked him to go to the police station and bail out a saloonkeeper, who had been arrested for violating the Excise law. Furnished bail and returned to bed at three o'clock.

6 A.M. — Awakened by fire engines passing his house. Hastened to the scene of the fire, according to the custom of Tammany district leaders, to give assistance to the fire sufferers, if needed. Met several election district captains who are always under orders to look out for fires, which are considered great vote-getters. Found several tenants who had been burned out, took them to a hotel, supplied them with clothes, fed them, and arranged temporary quarters for them until they could rent and furnish new apartments.

[1] *Evening Post*, New York, Dec. 14, 1907.

8.30 A.M. — Went to the police court to look after his constituents. Found six "drunks." Secured the discharge of four by a timely word with the judge, and paid the fines of two.

9 A.M. — Appeared in the Municipal District Court. Directed one of his district captains to act as counsel for a widow against whom dispossession proceedings had been instituted and obtained an extension of time. Paid the rent of a poor family about to be dispossessed, and gave them a dollar for food.

11 A.M. — At home again. Found four men waiting for him. One had been discharged by the Metropolitan Railway Company for neglect of duty, and wanted the district leader to fix things. Another wanted a job on the road. The third sought a place on the subway, and the fourth, a plumber, was looking for work with the Consolidated Gas Company. The district leader spent nearly three hours fixing things for the four men, and succeeded in each case.

3 P.M. — Attended the funeral of an Italian as far as the ferry. Hurried back to make his appearance at the funeral of a Hebrew constituent. Went conspicuously to the front both in the Catholic church and the synagogue, and later attended the Hebrew confirmation ceremonies in the synagogue.

7 P.M. — Went to district headquarters and presided over a meeting of election-district captains. Each captain submitted a list of all the voters in the district, reported on their attitude toward Tammany, suggested who might be won over and how they could be won, told who were in need, and who were in trouble of any kind and the best way to reach them. District leader took notes and gave orders.

8 P.M. — Went to a church fair. Took chances on everything, bought ice-cream for the young girls and the children. Kissed the little ones, flattered their mothers, and took their fathers out for something down at the corner.

9 P.M. — At the clubhouse again. Spent $10 on tickets for a church excursion and promised a subscription for a new church bell. Bought tickets for a baseball game to be played by two

nines from his district. Listened to the complaints of a dozen pushcart peddlers who said they were persecuted by the police and assured them he would go to Police Headquarters in the morning and see about it.

10.30 P.M. — Attended a Hebrew wedding reception and dance. Had previously sent a handsome wedding present to the bride.

12 P.M. — In bed.

5. POLITICAL CLUBS [1]

Political clubs, especially during the period of the campaign, are one of the most effective means of arousing popular interest and cultivating party loyalty. There are besides more formal organizations which act not only during campaigns. Many of these are like other social clubs except for the addition of allegiance to a political party as a qualification for membership.

The American political clubs last only for the campaign. Permanent political clubs are not entirely unknown in the States. In New York, in Philadelphia, and in several other important centres, there are, of course, large party clubs, but they are rather social than political, and, like all American clubs, are more aristocratic than the English clubs. The absence of a nobility, of an upper class created by the law and recognized by the national manners, is made up for in certain American cities by coteries, which form into magic circles, to which admittance can be gained only by showing one's credentials, or what they are pleased to consider as such. This tendency to social exclusiveness has not spared the select political clubs. But with that they are much less homogeneous than the English clubs as regards the political views of their members, because social conditions fill too large a place in the choice of the members, and especially because the latter are getting to change their party more and more frequently,

[1] Ostrogorski, M., *Democracy and the Party System.* Macmillan, New York, 1910; pp. 166–170.

while remaining members of the club. Lastly social relations in the United States, while sometimes painfully narrow, are superficial, and, amid the kaleidoscopic existence of the Americans, lack the stability which would give them the property of a political cement.

Alongside these political clubs, which are little distinguishable from non-political ones, there are others, in several large cities, of a much less exalted kind, whose members are almost all politicians, and, for the most part, politicians of low degree. Apart from the mercenaries of politics, the "workers," they are frequented only by the men who buy their influence, such as contractors for public works and government purveyors. The most distinguished of these clubs, if it is permissible to use the epithet, is the Democratic Club of Tammany Hall in New York. The subscription to the clubs is purely nominal; the expenses are almost always borne by a head politician, a "leader," who makes the club the citadel from which he directs the political operations necessary for getting hold of an elective post for himself or for his favourite candidate. The clubs of the politicians combine politics and pleasure, by organizing balls in winter, excursions in summer, outings, "chowder parties," or "clam bakes"; but even in these cases, the politicians keep to themselves and their own set without attracting the bulk of the electorate.

At the end of the eighties of the last century attempts were made to develop the system of permanent clubs and to recruit their members on a broader basis. The Republicans formed clubs all over the territory, and combined them into a national federation, the Republican National League. In reality most of the clubs have only a nominal existence, — hardly one club in a hundred has premises of its own; generally they hire a room for the occasion, and their meetings are few and far between. The members are, to a great extent, officeseekers, and young men attracted by the titles of president, vice-president, and other dignities which the clubs provide for their youthful vanity. The Democrats have followed the example set by their rivals, but

their National Association of clubs collapsed some time ago owing to internal divisions. The Republican National League, however, is not much more of a living body.

There are, however, permanent clubs and in very large numbers, which, without bearing this name, and without having any ostensible connection with politics, wield very great electoral influence. These are the drinking-saloons, especially in the large cities. With the lower orders, who spend their leisure time in the bars, the saloon-keeper is "guide, philosopher, and friend." The party organizations and the candidates therefore find him their most valuable helper for manipulating the electorate.

Of course, the drinking-saloons take in only the dregs of the population. To lay hand on the higher strata of the voters, the election organizers form for the duration of the campaign "campaign clubs" of citizens who in ordinary times pay little or no heed to politics. The great date of the presidential election reminds them of their civic duty. They respond piously to this sacred appeal and enroll themselves in a club flying the colours of their party or of its candidate for the Presidency. For the two or three months that the campaign will last, they meet, perhaps, every evening, they listen to speeches which glorify their candidate, they sing political songs, absorb enthusiasm for the party ticket, and diffuse this enthusiasm around them, in the club and outside it. This action and reaction comes all the easier to them since, very often, they do not present fortuitous aggregations of atoms brought together in a haphazard way, but groups formed in accordance with more or less natural affinities, due to a common occupation, race, or religion. Thus each Presidential campaign is the signal for an outburst of clubs, Republican and Democratic, of commercial travellers, of clerks of dry-goods stores, of lawyers, of merchants, of railroad employees; of workmen's clubs formed, not by wards, but by workshops, the workmen in a large factory dividing, perhaps, into two clubs, the one Republican, the other Democratic; clubs of coloured

men; Irish, German, Jewish, Polish, Swedish clubs; and even Republican or Democratic "cyclists' brigades."

A special kind of campaign clubs are "marching clubs," with the particular duty of walking about in procession and making a noise in the streets and squares, in honour of the party and its candidates. We have already come across clubs of this kind in the city where the National Convention was held, and where they carried on a gymnastic and vocal propaganda in favour of the presidential aspirants. Their usefulness to the parties is of a twofold kind: they help greatly to keep up "enthusiasm," and they gather to their standard young electors attracted by the quasi-military organization of these clubs; their members wear a special uniform and hold varied grades, such as captain and colonel.

Of late years the craze for campaign clubs has spread to the schools, the colleges. In almost every college or university there are formed, for the duration of the campaign, clubs of students to help the parties by speaking or by other forms of propaganda.

The number of electors enrolled in the campaign clubs is undoubtedly very considerable, and can hardly be below 1,500,000 or 2,000,000. If to these volunteer forces are added the paid combatants, they will all together, with the regular army of the party organizations, make up the enormous total of 4,000,000 out of an electoral population of 15,000,000 or 18,000,000. That is to say, there is one militant, entering heart and soul into the fray, to every four or five electors.

6. THE CONTRAST OF COUNTRY AND CITY ELECTORATES [1]

City and country electorates have become sharply contrasted, due to the floating character of city population, and the impossibility of acquaintance with all the voters. The different work to be done necessitates different methods of party organization.

[1] Bryce, J., *The American Commonwealth.* Macmillan, New York, 1910; Vol. II, pp. 101–104.

To understand how (the electoral machinery) actually works one must distinguish between two kinds of constituencies or voting areas. One kind is to be found in the great cities — places whose population exceeds, speaking roughly, 100,000 souls, of which there were in 1910 over forty in the Union. The other kind includes constituencies in smaller cities and rural districts. What I have to say will refer chiefly to the Northern States — *i.e.* the former Free States, because the phenomena of the Southern States are still exceptional, owing to the vast population of ignorant negroes, among whom the whites, or rather the better sort of whites, still stand as an aristocracy.

The tests by which one may try the results of the system of selecting candidates are two. Is the choice of candidates for office really free — *i.e.* does it represent the unbiassed wish and mind of the voters generally? Are the offices filled by men of probity and capacity sufficient for the duties?

In the country generally, *i.e.* in the rural districts and small cities, both these tests are tolerably well satisfied. It is true that many of the voters do not attend the primaries. The selection of delegates and candidates is left to be made by that section of the population which chiefly interests itself in politics; and in this section local attorneys and office-seekers have much influence. The persons who seek the post of delegate as well as those who seek office, are seldom the most energetic and intelligent citizens; but that is because the latter class have something better to do. An observer from Europe who looks to see men of rank and culture holding the same place in State and local government as they do in England, especially rural England, or in Italy, or even in parts of rural France and Switzerland, will be disappointed. But democracies must be democratic. Equality will have its perfect work; and you cannot expect citizens pervaded by its spirit to go cap in hand to their richer neighbours begging them to act as delegates, or city or county officials, or congressmen. This much may be said, that although there is in America no difference of rank in the European sense, superior

wealth or intelligence does not prejudice a man's candidature, and in most places improves its chance. If such men are not commonly chosen it is for the same reason which makes them comparatively scarce among the town-councillors of English municipalities.

In these primaries and conventions the business is always prearranged — that is to say, the local party committee come prepared with their list of delegates or candidates. This list is usually, but not invariably, accepted; or, if serious opposition appears, alterations may be made to disarm it, and preserve the unity of the party. The delegates and candidates chosen are generally members of the local committee, their friends or creatures. Except in very small places, they are rarely the best men. But neither are they the worst. In moderate-sized communities men's characters are known and the presence of a bad man in office brings on his fellow-citizens evils which they are not too numerous to feel individually. Hence tolerable nominations are made: the general sentiment of the locality is not outraged; and although the nominating machinery is worked rather in the name of the people than by the people, the people are willing to have it so, knowing that they can interfere if necessary to prevent serious harm.

In large cities the results are different because the circumstances are different. We find there, besides the conditions previously enumerated, — viz. numerous offices, frequent elections, universal suffrage, an absence of stimulating issues, — three others of great moment.

A vast population of ignorant immigrants.

The leading men all intensely occupied with business.

Communities so large that people know little of one another, and that the interest of each individual in good government is comparatively small.

Any one can see how these conditions affect the problem. The immigrants are entitled to obtain a vote after three or four years' residence at most (often less), but they are not fit for the suffrage.

They know nothing of the institutions of the country, of its statesmen, of its political issues. Those especially who come from Central and Southern Europe bring little knowledge of the methods of free government, and from Ireland they used to bring a suspicion of all government. Incompetent to give an intelligent vote, but soon finding that their vote has a value, they fall into the hands of the party organizations, whose officers enroll them in their lists, and undertake to fetch them to the polls . . .

In these great transatlantic cities, population is far less settled and permanent than in the cities of Europe. In New York, Chicago, St. Louis, Minneapolis, San Francisco, a very small part of the inhabitants are natives of the city, or have resided in it for twenty years. Hence they know but little of one another or even of those who would in Europe be called the leading men. There are scarcely any old families, families associated with the city, whose name recommends one of their scions to the confidence of his fellow-citizens. There are few persons who have had any chance of becoming generally known, except through their wealth; and the wealthy have neither time nor taste for political work. Political work is a bigger and heavier affair than in small communities; hence ordinary citizens cannot attend to it in addition to their regular business. Moreover, the population is so large that an individual citizen feels himself a drop in the ocean. His power of affecting public affairs by his own intervention seems insignificant. His pecuniary loss through over-taxation, or jobbery, or malversation, is trivial in comparison with the trouble of trying to prevent such evils.

As party machinery is in great cities most easily perverted, so the temptation to pervert it is there strongest, because the prizes are great. The offices are well paid, the patronage is large, the opportunities for jobs, commissions on contracts, pickings, and even stealings, are enormous. Hence it is well worth the while of unscrupulous men to gain control of the machinery by which these prizes may be won.

7. STATE CENTRAL COMMITTEES [1]

The active management of the party machinery is largely centralized in the hands of the State Central Committee.

The purpose of this sketch is to present a brief outline of the organization of the central or executive committees of the Republican and Democratic parties in the several states. . .

Apportionment of membership. On examining the method of apportionment of membership on the committees, it appears that several different systems are in vogue. The various units on which representation is based are the congressional district, the county, the legislative district, representative or senatorial, the judicial district, and the town. There is also a mixed or composite basis. The prevailing practice is to use either the congressional district or the county as the unit of representation. Of the Republican organizations fifteen use the congressional district, and of the Democratic, twelve, making a total of twenty-seven. The county is the unit in sixteen Republican committees and in twenty of the Democratic, making in all thirty-six. Of the ninety organizations, then, sixty-three employ either the congressional district or the county as the unit of representation. The legislative district is the basis in fourteen committees, nine Republican and five Democratic. The judicial district is used in two cases and the town in a like number. In some cases a mixed system is found, combining several methods. Of these the most remarkable is that of the Idaho Democratic committee, in which one member is taken from each of the five judicial districts, two are taken from each of the twenty-one counties, seven are chosen at large, and three so-called "press members" are selected in addition. . . Which of these various methods shall be employed is determined by geographical rather than party considerations. . .

The apportionment of members to these various units is

[1] Merriam, C. E., *Political Science Quarterly*, 1904; pp. 224–233.

based on geographical or territorial rather than numerical considerations. It is, in the main, not the party strength that is represented, but a given area or district. In some instances, however, recognition is given to the vote polled, although the principle is seldom fully carried out. . .

The size of the committee varies greatly in the different states. The largest is the Maryland Republican committee, which contains 124 members. . . Some of the committees, on the other hand, are comparatively small. Thus the Democratic and Republican committees of Virginia and of Iowa are each composed of only eleven members; and in many other states the committees are little larger.

Term of service. — The term of membership on the state committees varies from one to four years, but the most common period is two years. . .

Method of election. — The election of members to the committee follows a general but not unvarying rule. In most cases the delegates to the state convention from the area to be represented, whether this be the congressional district, the county or some other area, choose their quota of members. For this purpose they caucus separately. The choice of the caucus is usually final, but in some cases the state convention has the right to reject the members selected. In some states, however, the members of the central committee are not selected in the state convention, but by the local authorities in the counties. . .

A unique method of choosing the state committee is that provided for in the Wisconsin primary law, which is to be submitted to popular vote in 1904. Having abolished the state convention, the law proposes that, after the primaries, the party nominees for state office together with the candidates for the legislature shall meet and choose the state committee. In Mississippi, where a state-wide direct primary law has been adopted, the state convention still assembles every four years, and at that time selects the state central committee.

Vacancies and removals. — Vacancies in the committee are in

general filled by the remaining members. In a considerable number of states, however, there are exceptions to this rule. In states where the unit of representation is the county, the power to fill the vacancy is not infrequently lodged in the local committee. . .

The removal of members from the state committee seems not to be contemplated at all in some states. There is no provision for removal in the state constitution of the party and there is no record of any such case. The chairman of the Delaware Republican organization states, in reply to the question touching removal, that "ostracism" is the only method known to him; and from Iowa comes the answer: "making it so hot for him that he will resign." But in many states there is a well defined understanding as to the process by which a recalcitrant or disloyal member may be removed from the managing committee. . .

Officers and sub-committees. — The officers of a state committee are few in number. There is a chairman, a secretary, a treasurer, and sometimes, in addition to these, a vice-chairman and a sergeant-at-arms. These functionaries are generally elected by the committee itself; but they need not be, and frequently are not, members of the committee. In most of the organizations there are sub-committees, of which the most important is the executive or campaign committee. This is usually composed of from three to nine members and is the most active part of the state organization. Another important committee is that on finance, and in many state organizations there is a separate auditing committee. A speakers' bureau or literary bureau or both are frequently found. Of all the officers the chairman and the secretary of the whole committee are the most important. Indeed the campaign in many cases is really placed in the hands of these two men.

Powers. — The powers of the state central committee are seldom clearly defined, either by the written or by the unwritten constitution of the party. It can scarcely be said to govern and guide the party in the formulation and execution of policies, for as a rule this is a matter altogether outside its jurisdiction. The

informal steering or managing committee which really determines the policy of the party is likely to be another group of politicians, although the actual leaders of course control the state committee through their agents and are sometimes found there in person. The important powers and duties of a state committee, as of a national committee, center in the conduct of the campaign. Given the candidates and the platform, it is the function of the state committee to see that these particular persons and principles are endorsed by the voters of the state, or at least that the full party strength is polled for them. The state committee determines the time and place of the nominating convention, fixes the ratio of representation, and issues the call for the convention. It often makes up the temporary roll of the convention, suggests temporary officers of the convention, and in general assists in putting the machinery of the nominating body in operation. After the convention is over, the committee takes charge of the conduct of the campaign and exercises general supervision over its progress. The committee raises the funds necessary for the prosecution of the work and distributes them at its discretion. It prepares and sends out appropriate literature to strategic points within the state, and assigns speakers to places where it is supposed they will be most effective. In short, the state committee is the managing board entrusted with the conduct of the state campaign, and as such is expected to practise all the arts known to politicians to bring about the success of the party.

The adoption of the Australian ballot system has involved a legal recognition of the political party as sponsor for nominations to appear on the ballot under the party emblem or with the party name. The convention was declared the official representative of the party in the first instance, but it was found necessary to make further provision for vacancies caused by the death or disability of candidates for state office. The laws of most states accordingly authorize the state central committee of the party to fill vacancies occurring on the ticket. . .

In the conduct of a campaign the state committee coöperates with the national committee, and to some extent with the congressional committee. It must also be constantly in touch with the local organizations of the state. On the nature of the relation between the state and the local authorities, the printed rules of the state organizations present many interesting facts. In some instances the authority of the central committee over the local committees is very great. . .

In conclusion it may be said that the plans of organization here outlined are by no means rigid and inflexible in their nature. They are convenient methods of directing campaign work, but they may be altered or radically changed by the action of the state convention. Thus in Illinois, in 1900, when the nominee of the Republican party for governor failed to secure a majority of the state central committee, a resolution was introduced in the convention increasing the number of the committee by the addition of eight members at large. This motion was declared carried by the chairman of the convention, who proceeded to name eight members in the interest of the gubernatorial candidate. In any party emergency, or in the course of a fierce factional fight, the rules governing the organization of the central committee are likely to be over-ridden by the stronger or more cunning. To infer, however, from such instances of intervention on the part of state conventions, that the organization of a state central committee is a matter of slight importance, and that it makes little difference in whose hands the control rests, would be quite erroneous. To the ambitious aspirant for party authority the state central committee is a point of great strategic importance, and many a bitter fight has been waged for its control. The possession of the central committee is, if not conclusive, at least presumptive evidence of party authority and control — one of the external marks of sovereignty.

8. THE PARTY MACHINE IN PENNSYLVANIA [1]

Probably the most perfect example of a state machine which has been developed in the United States is the Republican organization in Pennsylvania, which is thus described by one of its critics.

Twenty parts of the potent, puzzling and destructive Quay machine, constituted of Federal and State officeholders, are as follows: —

Part A — A Republican State Committee which in every part is subjugated to serve the personal interests of Senator Quay first and the party next, without respect to the will of the people.

Part B — Great Prestige and Patronage, controlled by Quay as a United States Senator, with two votes, his own and the other.

Part C — Thirty Congressmen, with their secretaries, sixty persons, whose salaries aggregate $180,000 annually, and who are responsible to the machine for their respective districts.

Part D — The 419 officers and employees of the State government, who receive in salaries $1,034,500 annually, and who are selected only because they are supposed to be able to deliver the votes of their districts to any one the Quay machine dictates. These men are all assessed by the bosses and some of the documents in our possession will be curious reading some time.

Part E — The State Senate, with every officer, from president *pro tem.* down to page boys, selected to do the machine's bidding. The expenses of the Senate last year were $169,604.

Part F — The State house of representatives, with members, officers and employees, 257 in number, who drew $468,302 last year. All committees are selected by the machine, and are

[1] Wanamaker, John, *Speeches of Hon. John Wanamaker on Quayism and Boss Domination in Pennsylvania Politics.* Published by the Business Men's Republican League of the State of Pennsylvania, Philadelphia. Undated (1898?); pp. 231–235.

chairmaned by men who know no will but that of Senator Quay. Thus his machine absolutely controls all revenues and tax legislation.

Part G — Eight thousand one hundred and twenty-two post offices, with salaries amounting to $3,705,446. Most postmasters are made the personal agents of the machine in their respective towns.

Part H — Four thousand one hundred and forty-nine officers, a majority of whom are controlled by Senator Quay's machine, whose salaries amount to $5,000,000.

Part I — The Philadelphia Mint, with 438 employees, who receive in yearly salaries $326,565.

Part J — The offices of collector of port, with 400 employees, who receive in salaries $454,000.

Part K — The internal revenue offices, with 281 employees, who receive in salaries $356,400.

Part L — The United States Circuit and District Courts, with forty-one employees, who receive in salaries $95,000.

Part M — League Island Navy Yard and State arsenals, with 585 employees, who receive in salaries $725,000, making a total of 14,705 officers and employees who receive from the state and national governments $7,608,911 annually.

This great army of officeholders are thoroughly organized, and are at work every day in the year for the preservation of the Quay machine. To give you a clearer conception of what the machine is, I have taken, for example, a single county — that of Dauphin — which is eleventh in population and thirteenth in valuation, of the sixty-seven counties of this state. In this Quay stronghold there are seventy-three salaried county offices, controlled by the machine, with annual salaries amounting to $70,500; also seven Presidential post offices, paying salaries amounting to $12,000, and fifty-one fourth-class offices, paying $8,924, making a total of 131 machine agents, who are paid $91,424 by the state and national governments, at work in one county.

Part N — The thousand of trustees, other officials and employees of hospitals, state and private; state prisons, reformatories, state asylums, charitable homes, state colleges, normal schools, soldiers' orphan schools, scientific institutes and museums, who are expected to support the machine or the appropriations of their institutions will be endangered.

Part O — The combined capital of the brewers of the state, their thousands of employees and dependent patrons whom they control. It is alleged to have been the money of the brewers that paid the large sums during Superintendent of Mint Boyer's administration as state treasurer, necessary to make good shortages, which saved the machine, when his cashier, Mr. Livesey, became a fugitive from justice.

Part P — Besides the amounts paid for salaries of state officers which have already been accounted for, the appropriation committees, who are of Quay's personal selection, disburse $10,000,000 annually to schools, hospitals, penal institutions, etc. The bold manipulation of these funds for the benefit of the machine has educated people to regard moneys received for these purposes as personal contributions from Senator Quay, in return for which they must render help to his machine.

Part Q — The State Liquor League, whose members are in every city, town, hamlet and cross-roads throughout the state, and who maintain a permanent state organization, having headquarters and representatives at Harrisburg during the sessions of the legislature, are always for Senator Quay's machine, and form an important part of the machine's operations.

Part R — A large number of the common pleas judges throughout the state, who use their license-granting power for the benefit of the machine, by rewarding those faithful to the cause of Quay, and punishing those opposed to the machine.

Part S — The millions of withheld school and personal tax moneys that are used to further the interests of the machine. At 3 per cent. interest — the rate that Smedley Darlington testified, last week, under oath, his trust company paid — the ma-

chine has taken $2,500,000 of your money since Senator Quay began his reign.

Part T — The hundreds of subservient newspapers which are recipients of machine favors, with their army of news-gatherers and correspondents, who are forced to chloroform public sentiment and hide the iniquities of the machine. . .

The principal allies and partners of the machine are the corporations. The 15,000 national and state officeholders and the thousands of other officials connected with state institutions form a small part of the whole number of obedient machine men who are constantly at the command of Senator Quay, the admitted boss of the machine. The corporation employees of the state who are controlled for Quay's use increase the number to the proportions of a vast army.

The steam railroads of the state employ 85,117 men and pay them annually in wages $49,400,000. Of this number the Pennsylvania and Reading Railroads furnish 37,911 and 16,083 men respectively. The Vanderbilt system furnishes 12,432 men, the Baltimore & Ohio 3,615, the New Jersey Central 2,864, the Lehigh Valley 12,062, and the D. L. & W. 2,150. The great street railways of the state, who have received valuable legislative concessions for nothing, give the machine a loyal support with 12,079 employees, who are paid in salaries $6,920,692 every year.

That monopoly of monopolies, the Standard Oil Company, pays annually $2,500,000 to its 3,000 employees, who are taught fidelity to Senator Quay's machine. The Bethlehem Iron Works, whose armor plates are sold to the government for nearly double the contract price offered to foreign countries, influence their employees to such an extent that in the city of Bethlehem it has been found difficult to get men to stand as anti-Quay delegates.

The thousands of workingmen of the Carnegie Iron Works, it is said, are marched to the polls under the supervision of superintendents and foremen, and voted for Quay candidates under penalty of losing their jobs.

The great express companies who furnish franks to machine followers, one of which is bossed by Senator Platt, with their thousands of men, can be counted on for great service to the machine.

The telegraph companies, whose state officials can, it is said, be found at the inner Quay councils, with the thousands of employees distributed at every important point throughout the state, and before whom a large share of all important news must pass, is one of the most dangerous parts of the Quay machine.

The interests of the corporations and those of the masses have been diverging for many years, until now what is for the people's good will not suit the corporations, and what will seemingly satisfy the corporations is no longer safe to the people. The unlimited use of wealth and capital where there is free and full competition is not to be feared, but capital licensed by unjust and discriminating laws is the threatening evil of the day.

Capital with its manifold possibilities for good in itself becomes an agency of wrong and calamity when harnessed with favored legislation.

9. RULES OF THE REPUBLICAN PARTY IN PENNSYLVANIA [1]

In the states the action of parties has been regulated to varying degrees by state laws, but parties supplement these by rules laid down for their own management.

At a State Convention held in Harrisburg, August 24, 1899 the following rules were adopted for the guidance of the Republican party in Pennsylvania:

FIRST. — That the Chairman of the Republican State Committee shall be elected by the candidates nominated at the State Convention and the permanent chairman thereof as soon as practicable after the adjournment of the State Convention, and

[1] Adopted in state convention at Harrisburg, August 24, 1899. In force 1911–1912. (C. Ll. J.)

shall hold his office until his successor is elected. If there should be a vacancy caused by death, resignation or otherwise, after the meeting of the Republican State Convention and before the next ensuing general election, the candidates nominated at the said convention and the permanent chairman aforesaid shall fill such vacancy, but should a vacancy occur after the next ensuing general election, the Republican State Committee shall be called together by the secretaries of said committee and the majority of the members of the said committee present shall select a chairman, who shall serve until his successor is elected.

SECOND. — That the State Committee shall be elected by the delegates of the State Convention in each Senatorial district and shall hold their offices until their successors are elected, each of said districts being entitled to not less than two members: Provided, however, that where a Senatorial district consists of more than one county, each county shall be entitled to one member: And provided further, that the Chairman of the State Committee shall have power to appoint twelve members of the State Committee-at-large, who shall have the same voice in the management of the affairs of the party as the members selected from the Senatorial districts.

THIRD. — That the time for holding the State Convention of the Republican party shall be fixed by the State Committee and at least sixty days' notice thereof given of the date for holding the said convention.

FOURTH. — That the delegates to the State Convention shall be chosen in the manner in which candidates for the General Assembly are nominated, or in accordance with the party rules in force in the respective counties of this Commonwealth.

FIFTH. — That representation in State Conventions shall be based on the vote polled at the Presidential election preceding, one delegate being allotted to each Legislative district for every two thousand Republican votes and an additional delegate for a fraction exceeding one thousand votes, each district to have at least one delegate.

SIXTH. — That the State Committee shall hereafter have power to place in nomination candidates to fill any vacancies upon the State ticket caused by death, resignation or otherwise, and the said committee shall also have power to place in nomination a candidate to fill vacancy caused by death or resignation of any officer to be voted for by the electors of the State, where such vacancy shall occur after the regular convention of the party has been held, and the vacancy is to be filled at the next ensuing general election.

SEVENTH. — In all Congressional, Senatorial or Judicial districts, where the delegates or conferees in said Congressional, Senatorial or Judicial districts are unable to agree and make a nomination 55 days prior to the general election, the Chairman of the Republican State Committee shall appoint one representative Republican from each county of the district, who shall become a part of the original body and shall have the same voice in the deliberations as the original members. In event the convention or conference is then unable to agree within five days after the representative Republicans from each county in the district are appointed, as aforesaid, the Chairman of the Republican State Committee shall select a representative Republican in the district who shall act as umpire or referee in making a nomination.

10. THE POWERS OF A NATIONAL COMMITTEE [1]

The National Committee is the center of the party organization. Its functions are closely connected with the election of President, but it is also charged with general supervision of the party interests throughout the whole country. Its power has rapidly increased during the last twenty years.

[1] Ogden, Rollo, "New Powers of the National Committee." *Atlantic Monthly*, Vol. 89, 1902; p. 76. For a description of the powers of the congressional committee see Macy, J., *Party Organization and Machinery*. Century Co., New York, 1904; pp. 87-92.

One thing we may always be sure of, — a man or a committee will accept and wield every particle of power that offers itself. "Power cleaves to him who power exerts." It ought not to surprise us, then, if we find, on examination, that what was at first only a simple and temporary agency of party activity has silently taken to itself new powers, and assumed to exert them year in and out, instead of merely through a presidential campaign. That, in a word, is what I think can be shown to be true of the rôle in our political life which the National Committee has come to play. In its present prestige and animus, it would dictate to the very party which created it. It would control conventions. It would prescribe candidacies. It would distribute party rewards. It would both consolidate and perpetuate the power which has fallen to it. In short the clay of the National Committee is ready to say to the party potter that moulded it, "What doest thou?"

Like nearly every rise to undesignated power, that of the National Committee has been slow and gradual. *Nemo repente.* Its early function — the only one described in histories of parties and manuals of government — was very modest. It would appear that even Mr. Bryce knew of it as only a passing instrument of the party in a presidential campaign. Merely such, in fact, it long was. Most people did not even know who was the Chairman of the National Committee at any given time. . .

The change began to be sharply marked in 1884. It was owing in part to the personality of the Chairman, Senator Gorman, who then came forward, without clamor or controversy, to extend in a very notable way the powers and emoluments of the office. But his opportunity lay largely in the fact that a great party revolution was effected under his management. Had Mr. Blaine's campaign been successful, there is no reason to suppose that his Chairman, Mr. B. F. Jones, would have ranked as anything more than simply another of the respectable but meaningless figureheads of the National Committee. But with Gorman the case was different. Under his guidance, a party came

to power which had been out of office for a quarter of a century. It meant something like a convulsion. The Democratic party was stirred to its depths, — some would say to its dregs. Masses of men were swayed by new hopes of office; the whole federal administration was to be reorganized; the claims of individuals necessarily unknown to the President elect had to be sifted, and who so natural a presiding genius in all this work as the man who had had his hand upon each of the levers of the Democratic machine for five exciting months, and who enjoyed in a peculiar way the prestige of an unprecedented victory on a close-fought field? At all events, thousands of Democrats turned to Mr. Gorman at that juncture, and turned to him, not as Senator from Maryland, but as Chairman of the National Committee. How he magnified the latter office was not fully known at the time, except to those who had occasion to observe matters from the inside. Mr. Gorman was never a man to go hunting with a brass band. It was quietly, but none the less effectively, that he made his power as party Chairman tell in the distribution of party patronage, in the shaping of legislation, and as well in determining party policy. Not merely at the beginning of President Cleveland's first term, but all through it, those who were intimately acquainted with affairs at Washington knew how large a significance and how great a weight came to be associated with the influence of Senator Gorman. His *visé* was most eagerly in demand by office-seekers. His voice was most listened to in caucus. And the new deference which he won came to him, not as Mr. Gorman, not as Senator Gorman, but as Chairman Gorman. His tenure of the position marked the first great step in the enlargement of its powers and privileges.

He was closely followed by a man in the opposite party, who carried the assumptions of the National Chairman to a still higher pitch. Mr. Quay was less secret in his methods than Mr. Gorman. Immediately after the Presidential election of 1888, he publicly announced that his party office he was bound to make a continuous one; that he was going to look carefully to the work

of garnering all the fruits of victory; and that the National Committee (meaning himself) was not to sink back into inactivity, but was to keep a firm hand upon the party organization and upon party strategy. How persistently Senator Quay adhered to this plan is matter of too recent history to require detailing here. Enough to say that he sensibly enlarged the prerogatives and stiffened the self-assertion of the office he held. . .

It (was) in the person of Senator Hanna that this growth reached its culmination. . .

Never, it is safe to say, did a party Chairman previously have so much to do with the apportionment of party patronage. The President gave him substantially a free hand in the South. Then there came along the Spanish War, yielding our Cæsar of a Chairman further meat on which to grow great. Thousands of new appointments had to be made. For each applicant the indorsement of Chairman Hanna was eagerly sought. His power grew by power. After four years of its gradual increase came another successful campaign for the presidency, under his management. Reckoning all this in, we begin to see how high were the pretensions, how proud the importance and influence, which this most able and assertive of all the Chairmen of National Committees might have been excused for thinking lawfully his own. . .

It is difficult to set off, each by itself, the elements of the political power of the party National Committee, vested largely in its Chairman, for the reason that they are all inextricably interdependent. The Chairman has the spending of vast sums of money: this gives him political power. But he has the money to spend only because he is first in a position of political power. So of his rights of patronage; of control of party conventions, big and little; of his dictation in both party maneuvering and public legislation: all these things dovetail into one and another, and appear now as cause, now as consequence. Still, it is possible to see just how each of the instruments in the hand of the National Chairman may be made subservient to the upbuilding

of his own prestige and power. He has, for example, millions of dollars to disburse. There is good authority for the assertion that the Republican campaign fund of 1896 was upwards of seven million dollars. Mr. Hanna argued in 1900 that it ought to be twice as great, — presumably because the country was twice as prosperous. At all events, he was not cramped for funds in either year. Now the outlay of such huge sums necessarily means an increment of power for the man who controls it. Such will be the case even if he is the most unselfish and incorruptible of mortals. Money is power in politics as everywhere else. A Chairman who may determine how much is to be allotted to this state, that congressional district, this city and the other county, becomes inevitably the master of many political legions. There is no need of a hard-and-fast understanding between giver and recipient, — least of all, of any corrupt bargain. Common gratitude and the expectation of similar favors to come are enough to bind fast the nominee for Congress, the candidate for a Senatorship, or the member of the National Committee for any given state, a large part of whose campaign expenses has been kindly paid for him from headquarters. It is hard really to think ill of a man who has sent you a large check. To oppose your humble opinion to his necessarily large and enlightened view of party policy and public advantage is sheer presumption. To vote for him, or with him, or as he bids you, is thereafter obviously the line of least resistance. Thus it is that the bread which the National Chairman casts upon the waters returns to him after not so many days.

The pecuniary aspect of the Chairman's power has another feature. He collects as well as pays out; and with many of the collections goes an express or tacit party obligation which he alone is fully cognizant of, and which it is his peculiar duty to see carried out. Rich men do not always contribute to party in obedience to the Scriptural injunction to give, asking not again. They make conditions, either openly or by hint or gesture. . . .

It is not necessary to go into this. The present point simply

is that all this side of the business is so much more water for the mill of the party Chairman. He sits at the receipt of customs. To him are confided all the wishes and the schemings, and he makes all the promises, that go with the money paid him. Hence it becomes his concern to see that there is honor among politicians. And nothing is more inevitable than the resultant heightening of his political power, repository as he is of secret liens upon party action, and the one mysterious agent by means of whom they are made good.

A word or two will suffice to bring out the almost complete mastery of party machinery which has fallen into the hands of the National Committee since it became a continuous and continuously active body, and took to itself such new and great powers. When the Chairman now calls to order a national Convention, he is really facing a large number, sometimes a majority, of delegates who are there because he willed them to be there. To "call" the Convention has, in fact, come to be pretty nearly the same thing as deciding who shall be among the "called." The product which the party machine turns out depends too much upon the man who gives the signal to set it in motion, and who himself gets up steam and oils the bearings, not to have a strangely suspicious way of proving to be of just the kind he wanted. . .

The part that control of the patronage always plays in the building up of the party Chairman's overweening political power has been sufficiently intimated. . .

What has not been so patent, however, is the fact that even a defeated Chairman has a large measure of similar power. . .

(He) too, has a vast and intricate party machine, upon the very pulse of which he keeps his hands. He is in touch with his state committeemen. He has his congressional legions at command, to make trouble for the party in power unless they and he are duly placated with consideration and offices. . .

They were given him in recognition of his power, and at the same time, of course, increased that power. It is of the kind

which cannot be stripped from a party Chairman even in defeat, and which, in continued success, continually increases, until its possessor comes naturally to be regarded as almost a coördinate branch of the general government. . .

The present writer has no thought of falling into what George Eliot called the one form of gratuitous mistake, — prophecy. All that he wishes to do is to give a hint of the way in which a new power has grown to portentous size in our politics; to show how the Chairman of the National Committee has, little by little, taken to himself functions and privileges undreamed of a generation ago. . .

II. THE PRESIDENT AS A PARTY LEADER [1]

In spite of the intent of the framers of the Constitution the President has become a great party chief. He can make himself the general of all the party forces throughout the land — indeed a President who failed to do so, would now be a decided exception. His is the only voice which can speak the policy of the party to the nation as a whole.

The makers of the Constitution seem to have thought of the President as what the stricter Whig theorists wished the king to be: only the legal executive, the presiding and guiding authority in the application of law and the execution of policy. His veto upon legislation was only his "check" on Congress, — was a power of restraint, not of guidance. He was empowered to prevent bad laws, but he was not to be given an opportunity to make good ones. As a matter of fact he has become very much more. He has become the leader of his party and the guide of the nation in political purposes, and therefore in legal action. The constitutional structure of the government has hampered and limited his action in these significant rôles, but it has not prevented it. . .

[1] Wilson, W., *Constitutional Government in the United States.* Columbia University Press, New York, 1908; Chap. III (excerpts).

The rôle of party leader is forced upon the President by the method of his selection. The theory of the makers of the Constitution may have been that the presidential electors would exercise a real choice, but it is hard to understand how, as experienced politicians, they can have expected anything of the kind. They did not provide that the electors should meet as one body for consultation and make deliberate choice of a President and Vice-President, but that they should meet "in their respective states" and cast their ballots in separate groups, without the possibility of consulting and without the least likelihood of agreeing, unless some such means as have actually been used were employed to suggest and determine their choice beforehand. It was the practice at first to make party nominations for the presidency by congressional caucus. Since the Democratic upheaval of General Jackson's time nominating conventions have taken the place of congressional caucuses; and the choice of Presidents by party conventions has had some very interesting results.

We are apt to think of the choice of nominating conventions as somewhat haphazard. We know, or think that we know, how their action is sometimes determined, and the knowledge makes us very uneasy. We know that there is no debate in nominating conventions, no discussion of the merits of the respective candidates, at which the country can sit as audience and assess the wisdom of the final choice. If there is any talking to be done, aside from the formal addresses of the temporary and permanent chairman and of those who present the platform and the names of the several aspirants for nomination, the assembly adjourns. The talking that is to decide the result must be done in private committee rooms and behind the closed doors of the headquarters of the several state delegations to the convention. . .

In reality there is much more method, much more definite purpose, much more deliberate choice in the extraordinary process than there seems to be. The leading spirits of the national committee of each party could give an account of the matter which

would put a very different face on it and make the methods of nominating conventions seem, for all the undoubted elements of chance there are in them, on the whole very manageable. Moreover, the party that expects to win may be counted on to make a much more conservative and thoughtful selection of a candidate than the party that merely hopes to win. The haphazard selections which seem to discredit the system are generally made by conventions of the party unaccustomed to success. Success brings sober calculation and a sense of responsibility. . .

If the matter be looked at a little more closely, it will be seen that the office of President, as we have used and developed it, really does not demand actual experience in affairs so much as particular qualities of mind and character which we are at least as likely to find outside the ranks of our public men as within them. What is it that a nominating convention wants in the man it is to present to the country for its suffrage? A man who will be and who will seem to the country in some sort an embodiment of the character and purpose it wishes its government to have, — a man who understands his own day and the needs of the country, and who has the personality and the initiative to enforce his views both upon the people and upon Congress. It may seem an odd way to get such a man. It is even possible that nominating conventions and those who guide them do not realize entirely what it is that they do. But in simple fact the convention picks out a party leader from the body of the nation. Not that it expects its nominee to direct the interior government of the party and to supplant its already accredited and experienced spokesmen in Congress and in its state and national committees; but it does of necessity expect him to represent it before public opinion and to stand before the country as its representative man, as a true type of what the country may expect of the party itself in purpose and principle. It cannot but be led by him in the campaign; if he be elected, it cannot but acquiesce in his leadership of the government itself. What the country will demand of the candidate will be, not that he be an astute

politician, skilled and practised in affairs, but that he be a man such as it can trust, in character, in intention, in knowledge of its needs, in perception of the best means by which those needs may be met, in capacity to prevail by reason of his own weight and integrity. Sometimes the country believes in a party, but more often it believes in a man; and conventions have often shown the instinct to perceive which it is that the country needs in a particular presidential year, a mere representative partisan, a military hero, or some one who will genuinely speak for the country itself, whatever be his training and antecedents. It is in this sense that the President has the rôle of party leader thrust upon him by the very method by which he is chosen.

As legal executive, his constitutional aspect, the President cannot be thought of alone. He cannot execute laws. Their actual daily execution must be taken care of by the several executive departments and by the now innumerable body of federal officials throughout the country. In respect of the strictly executive duties of his office the President may be said to administer the presidency in conjunction with the members of his cabinet, like the chairman of a commission. He is even of necessity much less active in the actual carrying out of the laws than are his colleagues and advisers. It is therefore becoming more and more true, as the business of the government becomes more and more complex and extended, that the President is becoming more and more a political and less and less an executive officer. His executive powers are in commission, while his political powers more and more centre and accumulate upon him and are in their very nature personal and inalienable. . .

It is through no fault or neglect of his that the duties apparently assigned to him by the Constitution have come to be his less conspicuous, less important duties, and that duties apparently not assigned to him at all chiefly occupy his time and energy. The one set of duties it has proved practically impossible for him to perform; the other it has proved impossible for him to escape.

He cannot escape being the leader of his party except by incapacity and lack of personal force, because he is at once the choice of the party and of the nation. He is the party nominee, and the only party nominee for whom the whole nation votes. Members of the House and Senate are representatives of localities, are voted for only by sections of voters, or by local bodies of electors like the members of the state legislatures. There is no national party choice except that of President. No one else represents the people as a whole, exercising a national choice; and inasmuch as his strictly executive duties are in fact subordinated, so far at any rate as all detail is concerned, the President represents not so much the party's governing efficiency as its controlling ideals and principles. He is not so much part of its organization as its vital link of connection with the thinking nation. He can dominate his party by being spokesman for the real sentiment and purpose of the country, by giving direction to opinion, by giving the country at once the information and the statements of policy which will enable it to form its judgments alike of parties and of men.

For he is also the political leader of the nation, or has it in his choice to be. The nation as a whole has chosen him, and is conscious that it has no other political spokesman. His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. If he rightly interpret the national thought and boldly insist upon it, he is irresistible; and the country never feels the zest of action so much as when its President is of such insight and calibre. Its instinct is for unified action, and it craves a single leader. It is for this reason that it will often prefer to choose a man rather than a party. A President whom it trusts can not only lead it, but form it to his own views. It is the ex-

traordinary isolation imposed upon the President by our system that makes the character and opportunity of his office so extraordinary. In him are centered both opinion and party. He may stand, if he will, a little outside party and insist as it were upon the general opinion. It is with the instinctive feeling that it is upon occasion such a man that the country wants that nominating conventions will often nominate men who are not their acknowledged leaders, but only such men as the country would like to see lead both its parties. The President may also, if he will, stand within the party counsels and use the advantages of his power and personal force to control its actual programs. He may be both the leader of his party and the leader of the nation, or he may be one or the other. If he lead the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it. . .

The political powers of the President are not quite so obvious in their scope and character when we consider his relations with Congress as when we consider his relations to his party and to the nation. They need, therefore, a somewhat more critical examination. . .

Some of our Presidents have felt the need, which unquestionably exists in our system, for some spokesman of the nation as a whole, in matters of legislation no less than in other matters, and have tried to supply Congress with the leadership of suggestion, backed by argument and by iteration and by every legitimate appeal to public opinion. Cabinet officers are shut out from Congress; the President himself has, by custom, no access to its floors; many long-established barriers of precedent, though not of law, hinder him from exercising any direct influence upon its deliberations; and yet he is undoubtedly the only spokesman of the whole people. They have again and again, as often as they were afforded the opportunity, manifested their satisfaction when he has boldly accepted the rôle of leader, to which the peculiar origin and character of his authority entitle him. The Constitution bids him speak, and times of stress and change must

more and more thrust upon him the attitude of originator of policies.

His is the vital place of action in the system, whether he accept it as such or not, and the office is the measure of the man, — of his wisdom as well as of his force.

VIII. The Ballot

1. THE AUSTRALIAN BALLOT [1]

The Australian ballot has become a recognized part of American party machinery, but its use in England and in America is a recent development.

We mistakenly assume that the ballot was always a concomitant of the suffrage, but we should not overlook the facts that the provision for vote by ballot was stricken out of Lord Grey's Reform Bill in 1832, and that for the ensuing forty years the elections in England were conducted under the old *viva voce* system, as they had been for generations preceding. The agitation for a written ballot was especially active in the late '30's of the last century. It was vigorously promoted by the historians Grote and Macaulay. The opposition resorted to arguments that we can only half comprehend. There seems to have been abroad in the land a vague fear lest the voter, when privileged to exercise his franchise in secret, would wreak some awful vengeance on those in authority. Nor was this dread confined to old England. Sydney Smith, writing in 1839, quotes our own John Randolph of Roanoke as remarking in characteristic tone: "I scarcely believe we have such a fool in all Virginia as to mention even the vote by ballot, and I do not hesitate to say that the adoption of the ballot would make any nation a nation of scoundrels, if it did not find them so." The Southern States of the Union kept the *viva voce* vote long after the ballot had been

[1] Shaw, W. B., "Good Ballot Laws and Bad." *Outlook*, Dec. 9, 1905; pp. 864–867.

adopted in the North, and in the case of Kentucky the ancient method prevailed down to our own day.

The English opponents of the ballot argued down to the very last that secret voting would promote hypocrisy. At the same time they sturdily contended — and with good grounds — that the American ballot was not really secret at all. With tickets printed and circulated by the candidates or party managers, with absolutely no privacy for the voter in preparing his ballot, it was only in exceptional cases that any citizen's vote was his personal secret. There was nothing in either the laws or the customs of the country to enforce secrecy, and, as a matter of fact, public opinion did not demand such enforcement. England profited sooner than we from this experience. It was shown that bribery flourished where the briber was permitted to see that the bribed voter "delivered the goods." Therefore, when the Ballot Act of 1872 was drafted, British statesmen saw to it that American mistakes were not copied. They wisely adopted the essential features of the system that had been in successful operation in the Australian colonies for nearly a score of years. A booth was provided in which the voter, absolutely alone, must prepare and fold his ballot, which was printed by the Government instead of at private expense, and which could be obtained only from the duly appointed election officials. Safeguards were thrown around the voter's privacy at the polls. A heavy blow was struck at bribery when votes could no longer be delivered openly to the buyers. It was admittedly unprofitable to deal in a commodity whose whole value rested on the word of an interested party, and which by no manipulation of the election machinery could be "checked up."

The Australian ballot had been in use, . . . for almost twenty years before England made it a part of her own electoral machinery, and it was almost another twenty years before the United States was ready to take this leaf out of Great Britain's experience. The adoption of the principles of secrecy and an official ballot by so many States in the years 1889–93 meant a

great gain for the cause of pure elections in this country. Attempted perversions of the means and thwartings of the ends of true reform which have crept into many of the ballot laws should not blind us to the fact that these two principles have become imbedded in our legislation. Whatever arrangement of names upon the ballot may be prescribed by this Legislature or that, we may rest assured that public sentiment will not in this day permit a return to unofficial voting-papers or the abandonment of those legal provisions which now secure the voter's privacy.

It may safely be assumed that every State will retain these essentials of an adequate ballot law, but in other features there are now and probably will continue to be wide divergences. . .

2. FORMS OF BALLOT[1]

The forms which the Australian Ballot has taken in America are almost as numerous as the states which have adopted it. Some of the more striking contrasts will serve to illustrate how the principle has been adapted to the needs of the different commonwealths.

It is the purpose of this paper to show not only that the form of the ballot has a very powerful influence on the results of elections, both as regards the freedom of the voter in making his choice and the accuracy with which he records it, but also to bring out, so far as possible, the precise effects produced by each variety of form. . .

To-day, after seventeen years of experience, the diversity of legislation in this country is certainly as great as when the secret ballot was a novelty.

Take the mere matter of size and shape. The voter in Wisconsin unfolds in the booth a hugh blanket sheet which in 1904 measured thirty-five inches by twenty-four. In Florida in the same year he made his marks on a narrow strip three and one-

[1] Allen, Philip L., "Ballot Laws and their Workings," *Political Science Quarterly*, Vol. XXI, No. 1, 1906.

half inches wide and thirty-one and one-half inches long. From these the styles run all the way down to the sheet of hardly more than note-paper size used in Maine (10 × 8) and Oregon (8 × 12). A number of the states undertake to help out the illiterate voter by a picture gallery of party emblems, but even in this no party adheres everywhere to one design. The Socialists come nearest to uniformity, two clasped hands in front of a globe being their emblem in Alabama, Delaware, Indiana, Kansas, Kentucky, Louisiana, and New Hampshire, though a torch heads their column in Michigan, Ohio, New York, and Utah. The Prohibitionists are at the other extreme. The only emblem on which any two of their state organizations agree is the sun rising over a body of water. This emblem is used in Indiana and Kansas. They have hatchets in Alabama, a house and yard in Delaware, a phœnix in Kentucky, an armorial device in Michigan, an anchor in New Hampshire, a fountain in New York and a rose in Ohio. The Populists show nearly as much variety, using a combination of plough, pick and saw in Alabama, an anvil in Delaware, a liberty bell in New York, a plough in Indiana and Kentucky, a frame cottage and a tree in Kansas, a factory marked "producers unite" in New Hampshire, and a flag-covered box labelled "Jefferson, Jackson and Lincoln" in Michigan. An eagle is the commonest device of the Republican party and a gamecock of the Democratic; but the former party is represented by a statue of Vulcan in Alabama, a log cabin in Kentucky, an elephant in Louisiana, and a portrait of Lincoln with the flag as background in Michigan, while the Democrats have a plough in Delaware, a flag in Michigan, and a star in New Hampshire and New York. . .

These superficial dissimilarities, however, merely reflect the diversity that exists in regard to fundamentals. The especial point to be considered first is the relative ease with which under different ballot laws a split ticket and a straight ticket may be voted. So far as this matter is concerned, the mere shape or mechanical arrangement of the ballot is by no means decisive.

As will appear later, two states may have official ballots practically identical, so far as the printer's work is concerned, and yet, by reason of the statutes prescribing the method of marking, one of these may offer the greatest encouragement to the independent voter while the other puts the heaviest penalty on all but the straight party man.

For the purposes of classifying such enactments we will take in each state the hypothetical case of two voters: A, who desires to vote the straight Republican ticket, and B, whose choice falls on a Democrat for governor and Republicans for all other offices. At our imaginary election there are to be chosen ten presidential electors and ten state and local officers. In many of the states B, the independent voter, has the choice of several methods of recording his preferences. Where such choice exists, it is here presumed that he will choose the method involving the least mechanical difficulty or labor. Generally speaking, the independent voter is the intelligent voter, and after informing himself of the provisions of the ballot law in his state, he will save himself unnecessary trouble by taking the shortest cut.

The commonest ballot is the party-column type, modifications of which were used in twenty-three of the forty-five states at the last national election. These all agree in having the full ticket of each party printed in a single column, usually so arranged that all candidates for a given office have their names in the same horizontal line. In voting such a ballot five different methods are in vogue.

1. A makes a separate mark opposite each of the twenty names in the Republican column. B makes nineteen in that column and one opposite the democratic nominee for governor. This is the rule in Montana.

2. A makes a single mark at the head of the Republican column. B does the same, and makes an additional mark opposite the name of the Democrat for governor. This is the rule in California, New York, North Dakota, Washington, South Dakota, Illinois, Ohio, Wisconsin, and Kentucky.

3. A makes a single mark at the head of the Republican column. B does the same, then draws a line through the name of the Republican candidate for governor, and makes a mark opposite the Democrat. This is the rule in Michigan, New Hampshire, Utah, Wyoming, Idaho and Alabama.

4. A makes a single mark at the head of the Republican column. B makes twenty marks, one opposite the Democrat for governor and nineteen opposite the names of all other officers in the Republican column. This is the rule in Iowa, Louisiana, Kansas, Vermont and Indiana.

5. A designates the Republican column (either by a cross or by drawing a line down the others). B does the same, and then inserts the Democratic gubernatorial candidate's name in that column, either by paster or by writing it in, although that name is already printed on the ballot in an adjacent column. This is the rule in Delaware, Maine and West Virginia.

6. The next form of ballot is virtually the foregoing one cut into strips. The voter receives a bundle of official ballots, one slip for each party. A deposits the Republican slip without alteration. B pastes or writes in the name of the Democrat for governor. This is the rule in Connecticut, Missouri, New Jersey and Texas.

7. Georgia, North Carolina and South Carolina are the three states which have no official ballots. The candidates or party organizations usually prepare and distribute the ballots, which may be written or printed or partly written and partly printed. A and B can prepare the kinds they want in any way they please, conforming merely to certain regulations regarding size and quality of paper.

The fourteen remaining states arrange the names on the ballot by offices instead of by parties. There are six varieties to be noted.

8. The names of candidates for each office are placed within a separate "box" or printed margin, arranged in alphabetical order, and each followed by the name of the party making the

nomination A and B must both pick out and mark their candidates one by one. (They will make eleven marks apiece if there is provision for voting all ten electors at once, and twenty marks apiece if there is not.) This is the rule in Massachusetts, Rhode Island, Oregon, Nevada and all but eleven counties of Maryland.

9. The names within the "boxes" are not arranged alphabetically but in the same order of parties for each office. The party name is printed after each name. Thus A finds the Republican candidates invariably first on the list (or second, as the case may be), and B can follow the same uniform rule except as regards the governorship. This is the rule in Minnesota.

10. The names are not in alphabetical order, and those for each office are merely printed in a close group without the ruled line to separate them. Instead of marking opposite the desired name, the voter strikes out all except that one. A and B thus make the same number of erasures. This is the rule in Arkansas and Virginia.

11. The names are grouped by offices, but the party of each is not designated. This is the rule in Florida, Mississippi, Tennessee and eleven counties of Maryland.

12. There is a "box" for each office, the names are arranged in alphabetical order with party designation, but across the top is printed "I hereby vote a straight —— —— ticket, except where I have marked opposite the name of some other candidate." A simply writes the word "Republican" in the blank. B does the same, afterwards making a mark opposite the name of the Democrat nominated for governor. This is the rule in Colorado.

13. There is a "box" for each office with party designation, but somewhere on the ballot a space is provided for voting a straight ticket of each party. The electors are so arranged that all can be voted by one mark. A makes one mark in the straight ticket space. B makes eleven marks, picking out his candidates from each party group. This is the rule in Nebraska and Pennsylvania.

Thus at one extreme are the states in which the independent voter in the hypothetical case is put to twenty times as much mechanical labor in voting as the hide-bound partisan, and at the other extreme, those in which the two are put to exactly the same amount of trouble in voting. Iowa and Montana have ballots which look as much alike as the pages of two conservative newspapers, yet they are at opposite poles as regards the premium they put on straight ticket voting.

The Colorado ballot, but for a single printed line, would be extremely like that of Massachusetts, yet, it really stands on an exact parity with New York's or Ohio's as regards the ease of split ticket voting. Pennsylvania's ballot does not look like that of Kansas, yet, on analysis they are seen to differ essentially only in the provision which lets the Pennsylvanian vote for all the state's presidential electors at once, by a single X mark. . .

A person of any intelligence, who knows how to read and has taken the trouble to find out the names of the candidates, ought seemingly to have no difficulty in casting his vote correctly even with the most confusing of these forms. (But the returns of elections show), if nothing else, the proclivity of the American voter to make mistakes where there is any possible excuse for his doing so. It is this which makes it impossible to say of any type of ballot, "This is the best, and every community should adopt it." We know that the straight ticket circle discourages independent voting, which is the same thing as saying that it improves the bad candidate's chances of being "pulled through" by the popularity of the good candidate of his party. But in letting the illiterate man vote, we assume that he is competent to decide at least which party he wants to put in power. The party circle with the picture over it may conceivably in some communities be the only system under which he can vote without blunders. A state which contains many such illiterates and is determined to let them vote must therefore decide, before fixing on any form of ballot, whether in view of its peculiar conditions haphazard voting or hide-bound voting is the lesser evil. . .

If it is twenty times as much trouble to vote a split as a straight ticket, few persons are going to choose the former, whether the unit is a pencil mark or the movement of a celluloid button. The fear of making a mistake that will invalidate entirely is, it is true, removed, and this should give the voter a greater sense of freedom, but the argument of least resistance applies nevertheless. . . .

This is a period in which the importance of little things is being more and more recognized. Advertising experts have learned to estimate the psychological value of various typographical arrangements. Railroad companies have conducted expensive tests to determine what style of type in their timetables will be read with the minimum of mistakes and thus save their patrons from missing trains through misreading the starting time. At least as careful attention should be given to the make-up of that most potent of all sheets of paper, the ballot.

3. THE ADVANTAGES OF THE MASSACHUSETTS BALLOT [1]

The Massachusetts ballot has received more general commendation than any other form. In it the voter must indicate not merely his general party preference but his choice of the candidates for each office upon which his vote is to count.

I do not for a moment claim that the Massachusetts system of balloting is going to cure all our political evils, but I do claim this, that of all the systems of balloting that I know anything about it gives to the people the freest opportunity to express their wishes. . .

Massachusetts is neither as largely native born in its population nor does it stand as high educationally as people usually suppose. Only 44 out of 100 of our citizens are native born of native parents, and on the point of literacy we stand only twenty-

[1] Dana, Richard Henry, "The Form of Ballot." *City Club Bulletin*, City Club of Philadelphia, April 21, 1910.

third in the states of the country. I say this in advance because you may think, and sometimes it has been claimed, that the Massachusetts form of ballot is successful only where the native born prevail and where the people generally are extremely well educated. . .

Under the Massachusetts system, as you doubtless know, the candidates for the same office are grouped together alphabetically on the ballot with the party name or names after each candidate, and a citizen votes for an official in a group, or officials in case more than one are to be voted for in such a group, by placing a cross mark opposite the name and party designation of the candidate or candidates he chooses. For example, all the candidates for Governor are in one group, all those for Lieutenant Governor are in another group, and so on. . .

Specimen ballots, of course, are printed on colored paper and posted in public places in the streets and also in the polling rooms so that voters may examine them before receiving an official ballot.

Now, the chief objections urged against the Massachusetts system are, that it takes too long to mark the ballot; that it must cause delay in large precincts especially; that the less educated must be discouraged and stay away from the polls or, if they come, must make mistakes; that the system must favor independence to the extent of breaking up the parties; that there is a general falling off from the head of the ticket because, as it is sometimes urged, the voters get tired and stop marking; that persons standing first in groups, with names nearer the head of the alphabet, have an advantage over those coming lower down in a group; and that generally speaking the system is not popular. . .

Of all these points it happens that we have a good deal of accurate information. The average city precinct has from 400 to 700 or 800 registered male voters, a few have over 1000, and some of those are in manufacturing districts where most of the voters have to vote early in the morning or at the noon hour.

There are eleven polling places in the state in which there are from 2000 to 3000 registered voters in each, and yet there has been no difficulty in their voting without delay or inconvenience. The actual time in marking a single ballot is well under two minutes, while many people mark their ballots, in less than one minute. . .

As to the claim that people are kept away from the polls, exactly the opposite is the case. In the first four years it was found that more people by twenty per cent. voted for Governor than in the last four years under the old system, and there was an increase in population of only 11 per cent. . .

As to the less educated, especially, being kept away from the polls, the cities are supposed to contain a larger proportion of less educated voters than the towns, and yet in the three years beginning with 1889 when the Massachusetts Act went into effect, the percentage of registered voters voting in the twenty-five cities was greater than the percentage voting in all the towns. . .

While the system undoubtedly favors independent voting it has by no means broken up parties. That it does, however, secure to the voters a free chance to express their views has been most markedly shown. . .

In 1904, though the state went Republican for President by 92,000 it went Democratic for Governor by nearly 36,000 on the same day and on the same ballots, while again Mr. Curtis Guild, Jr., a Republican candidate for Lieutenant Governor was elected by 30,000 plurality on the same ballot on the same day, a shifting of about 126,000 votes. . .

As to the complaint that there is a falling off from the head of the ticket because the voters get tired and stop from sheer fatigue, it is, to be sure, generally true that there is a falling off from the head of the ticket, but this is by no means universally true. A careful analysis of the votes will disclose the fact that voters voted for those offices that interested them, and over which there had been some canvass, no matter where located on

the ballot. It also clearly shows a popular vote against the long ballot, which we still have in our State elections in Massachusetts. . .

As to the claim that the one whose surname begins with "A" has an advantage over the one whose name begins with "W" in the same group on the ballot, there is just a slight basis of fact for this contention. In some minor offices, over which there is no contest, especially where four or five vacancies of the same kind in the same group are to be filled, such as members of school committees, assessors of taxes and the like, and especially where the candidates have been nominated on non-partisan or citizens' tickets, an initial letter early in the alphabet has been an advantage. But even in these minor offices this has not been true where there has been a public contest, as has been proved over and over again. . .

Now, as to the popularity of the system in Massachusetts, we can say that though several attempts have been made to adopt the party column and single mark system, they have always been defeated by a large majority, — so large some five or six years ago that no one has even attempted to introduce a bill in the Legislature to go over to the party column system. In the State election the towns of Massachusetts must use the Australian system but in their town elections they vote in any way they please. We have a singularly strong proof of the popularity of the system in the fact that two-thirds of all the towns in Massachusetts, including every single town of any large population, have voluntarily adopted the Massachusetts form of Australian ballot. The only exceptions are the little towns of 400 to 600 inhabitants, who all know each other and vote in a very informal manner. The method is also used in the election of overseers at Harvard University and almost universally throughout the state.

To sum up, under the Massachusetts system, the ballots are rapidly and easily marked, there is no delay or blocking even at very large precincts. The voters are not kept from voting, but

on the contrary more come to the polls than before the system was adopted. The less educated, and even those accustomed chiefly to manual labor, mark their ballots intelligently and clearly. There is little falling off in the vote from the head of the ticket to offices lower down, except for those offices that do not interest the public; but even there, in no way of itself, does this falling off influence results. On the other hand each office gets separate consideration and this tends to raise the character of the nominations for the less important offices on the ticket. The alphabetical order makes practically no difference in cases where the public has an opinion to express, and the system is popular with the people. Even the party workers have to profess to like it, whether they do or not.

4. THE FEDERAL ACT REQUIRING WRITTEN OR PRINTED BALLOTS FOR THE ELECTION OF MEMBERS OF THE HOUSE OF REPRESENTATIVES [1]

Due to the Federal character of our government the form of ballot is primarily in the control of the states. Even the form of ballot for election of members of the national House of Representatives is under the control of the states with the exception that the ballot must be written or printed.

CHAP. CXXXIX. An act to amend an Act approved February twenty-eighth, eighteen hundred and seventy-two, amending an Act approved May thirty-one, eighteen hundred and seventy, entitled "An Act to enforce the Rights of Citizens of the United States to vote in the several States of this Union, and for other Purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section nineteen of an act to amend an act approved May thirty-first, eighteen hundred and seventy, entitled "An Act to enforce

[1] United States Statutes at Large, Vol. 17, p. 61, May 3, 1872.

the rights of citizens of the United States to vote in the several States of this Union, and for other Purposes," and amended act approved February twenty-eighth, eighteen hundred and seventy-one, shall be, and hereby is, amended so as to read as follows: "Sec. 19. That all votes for Representatives in Congress shall hereafter be by written or printed ballot, any law of any State to the contrary notwithstanding; and all votes received or recorded contrary to the provisions of this section shall be of none effect: *Provided*, That this section shall not apply to any State voting otherwise whose elections for said Representatives shall occur previous to the regular meeting of its legislature next after the approval of said act."

Approved, May 3, 1872.

5. BALLOT REFORM: NEED OF SIMPLIFICATION.[1]

The large number of offices filled by election is becoming an increasing source of complaint. Ballot simplification, by separating elections, by filling some of the offices otherwise than by election and by various other means is urged as one way by which popular interest in elections and a greater feeling of responsibility by those elected may be secured.

The theory of an election, I take it, is somewhat as follows: It is known that on a certain day the people are to select an officer to perform on their behalf certain duties and to hold certain powers. The office is made desirable by reason of the salary and honor and power attached to it. Various aspirants for the place come before the public by one method or another, make known their qualifications for the office, explain the policies which they desire to put into effect through the power attached to that office, and the voters go to the polls on election day and indicate on the ballot which of the aspirants they prefer.

This process constitutes an election as fondly imagined by

[1] Childs, R. S., *Proceedings of the American Political Science Association* Vol. VI, 1909; pp. 65–70.

those who first framed our various constitutions and charters. This idea of an election is perfectly sound and perfectly practical. It has, however, certain distinct limitations based on familiar facts of human nature, and in the United States these limitations have been stupidly overstepped.

The theory of an election, as outlined, presupposes that the voter is to have an opportunity to get some kind of acquaintance with the claims of the various aspirants for the office. If he fails to do this, it is inevitable that his vote will be unintelligent and easily controlled by those who have an interest in the election.

If the voter in a large community is to know the candidates, it is necessary that the latter secure a proper amount of publicity so that each candidate shall become in the mind of the voter a definite mental picture — a picture so definite that the voter will develop a preference based on adequate information. It must be evident that there is a limit to the number of elections which can be held simultaneously without blurring these mental pictures. Any man must admit, for instance, that it would not be practical to hold 100 real elections on one day. No voter could remember several hundred candidates even if he tried to do so in systematic fashion, and a system which put the names of several hundred candidates for a hundred offices upon the ballot (without the aid of some guide or trademark label) would result in confusion, out of which emerge as victors, not the candidates who were most successful in getting votes, but those who were least *un*successful. It would be like letting school children vote, and the result would have no significance as an expression of opinion.

The same condition will be true of a ballot which has much less than 100 places to be filled. It will be true, in part at least, at any election where a non-partisan ballot would be impracticable. If you apply this test of leaving off the party labels, you will see by analyzing the resulting bewilderment, to just what extent the people are ruling, and to what extent they are being led by a ring in their nose.

Take the ballot you voted at the last election! Cut it up with a pair of shears and paste it together with the party labels eliminated, so that for the office of county clerk, for instance you will be compelled to choose between Smith and Jones and Robinson. If on looking over this ballot you find that you are lost without the party label to guide you, that your vote for certain offices was without knowledge or intelligence, to that extent you will know *you* have not been exercising control, but have, by a kind of proxy-giving, delegated your share of the control of those offices to some one else. Extend the same examination to the entire electorate and you will see to what extent it has proven a failure as an instrument of popular control of government.

A voter who votes blindly is being bossed. Very few voters, even the illiterate, vote a ballot *entirely* blindly. Even the Italian street digger probably has certain reasons for supporting A or B for governor; but every American citizen, with the exception of the professional politicians, votes blindly on certain parts of his ballot, and is to that extent being bossed.

The wide acceptance of bossism is commonly denounced as "apathy" or "indifference," and people say "the citizens are asleep and only the politicians are awake." It is an ancient libel. American citizens are as a whole no more apathetic than the citizens of any other democratic nation. If the burghers of Glasgow were brought in a body to Philadelphia, and compelled to hold a few elections under the present Philadelphia system, they would get the same kind of government that the Philadelphians are now getting for themselves. And likewise, if the people of Philadelphia were transferred to Glasgow, the government of that city would continue to be one of the best in the world year after year and election after election. Human nature is the same in Philadelphia and Glasgow. The essential difference is only in the size and character of the burden of participation thrown upon the electorate. If you argue differently you must be prepared to prove that the flood changed the human nature of the people of Galveston. The city of Houston ad-

vertises that its city hall is run like a business office. Once it was run like a political hang-out. Did the adoption of the commission plan of government suddenly change the character of the people of Houston?

Apathy, indifference, are *relative*, depending entirely upon how much is demanded. Suppose, for instance, there were but one polling place for an entire city, so that the citizens must travel considerable distances on election day in order to cast their votes. Immediately we should confront the phenomenon of a decreased vote — more "apathy" as compared with the present condition, where there is a polling place at every barber shop.

Suppose we put the polling place ten miles out of town on the top of a mountain so that every citizen had to go out and scramble all day to get there — we should have a still smaller vote. Most of the citizens would stay in town and attend to their own business, and the reformers would say in disgust "the citizens are supremely apathetic and indifferent and won't do their duty." Yet the people of the town are the same people all the time — no more really apathetic than when the full vote turned out on election day under the other conditions.

That is what I mean by saying that apathy is relative, depending entirely upon how much is required.

We have made our politics even more inaccessible to the people than I have described when I put the polling place on the mountain top. If you and I could, by walking 10 miles and climbing a mountain once a year become effective participants in politics, it is not at all unlikely that we would make the effort. But we have a system of politics so elaborate by reason of the multiplicity of elective offices, that politics has come to be considered a separate profession. That is the very climax of inaccessibility; it removes politics to a distance equivalent to a year's journey.

Every citizen knows that, reformers to the contrary, little is gained in the effectiveness of the citizen by attendance at caucuses and primaries. A citizen must become so familiar with political workings, so strenuous in his opinions and in his politi-

cal activity, that he becomes a member of the little conclave that meets previous to the caucuses, to set the tables for the electorate, before he begins to exercise any real control over the business of nomination and election. He can do that only at the serious sacrifice of other business. In consequence, the men who become and remain effective politicians are either men who find in politics satisfactory remuneration, or else the leisure class including millionaires and tramps.

The hope of America does not lie with any such class as this, but rather with the men whose time is too valuable to permit them to go into politics. When we make politics a profession, we automatically exclude 95 per cent of the voters, — the great unbribable mass of the community. To restore control to 100 per cent of the people, to secure democracy in place of government-by-politicians, we must so simplify politics that it will no longer constitute a separate profession; we must simplify it until a busy man can, in his scanty spare time, become sufficiently versed in its mysteries to become effective. We must make politics accessible to the great bulk of our citizens.

To simplify politics means that we must strive to approach our ideal of an election, where the candidates come forward, get a full hearing and each voter selects his favorite and has a reason.

One test of practicability is the need for a "ticket" or a "label" to guide the voter; and when we call for the selection of 10, 20 or 30 officials on one day, we find that the people begin to vote by tickets, by party labels instead of by men, giving themselves over blindly to the guidance of politicians.

But it is certainly possible to elect one man on one day in ideal fashion. Experience has demonstrated that beyond a doubt. The experience of certain western cities that are governed by commissions of five elected on a non-partisan ballot shows that the average citizen can manage to select five separate favorite candidates without the aid of a ticket. Whether the exact limit is five or six or seven, is of course a matter that cannot be exactly demonstrated. But tickets have been used at times

in some of those cities, showing that five is at least near the border line.

Accessibility thus attained is not enough, however; the people will not inevitably participate even if they can. Having led our horse to water we must get him to drink. For instance, suppose we elected a county clerk and no one else at a given election. There is an ideally short ballot — just a single place to be filled — a perfectly "accessible" bit of politics. Yet the ballot on that occasion would fail to gather the judgment of the people just as surely as if the county clerk were lost in a crowd of other minor officials at the bottom of a long ballot. The people with a few exceptions would not go to the polls or pay any attention to the matter, for the share of each voter in the matter of the county clerkship is too insignificant to deserve attention. The electorate shrugs its big shoulders and flatly declines to be bothered.

So we face the problem of devising a system in which the people not only *can* participate but *will* participate. The importance of the election must reach the consciousness of every voter. The way to bring this about is not by exhortation and prayer, but by giving real importance to the position that is to be filled so as to make it naturally conspicuous. For instance — the office of state assemblyman in New York is among the neglected positions. In actual practice this is now an appointive position — appointive by some self-established and irresponsible coterie of local politicians. Even in the off-years when the assemblyman is sometimes the only place on the ballot, experience shows that the people do not take control. The place cannot of course be made appointive by any other elective officer. The proper alternative is to increase the importance of the office. At present the assemblyman is a mere one one-hundred-and-fiftieth of one-half of a legislature, whose actions are closely circumscribed by the constitution and subject to the veto of the governor. Suppose that, following the experience of the cities, we substitute one chamber for the present bi-cameral system, and triple the

size of the districts. Each assemblyman would then be six times as important and, with his increased capacity for good or ill, would attract more criticism, more popular examination. If the people still fail to get excited over that office, cut the size of the assembly in half again, thrusting upon twenty-five men the responsibility of all legislation for a great state. And surely then, if not before, the office will reach a pinnacle of light where the whole electorate will see it and feel concerned about it, and where it will be beyond the grasp of the politicians.

And so we have two practical limitations to our ideal of an election.

1. The number of officials to be elected at any one time must be limited to five or less; and

2. The elective offices must be limited to those that are of such importance and character that the people will consent to exert themselves to make the selection themselves.

In building a democracy everything else must be warped to fit these fundamental limitations. For these are the limitations of the people themselves. We cannot wait for human nature to change, we must order our institutions to fit human nature. There is no hope in putting a square collar on our horse and then condemning the horse for failure to grow a square neck. Accordingly, while it may seem desirable to have a state treasurer elected so as to secure independent audit of accounts, we must secure protection in some different way if it is found in practice that the people do not select the state treasurer for themselves.

It may seem desirable in a city, for various reasons, to have a large council elected at large; but that plan with all its advantages must be rejected on account of the supreme and unalterable disadvantage that in practice the real selecting under those conditions is not done by the voters.

No matter how many reasons may be advocated for having all county officials independently elected, those reasons cannot stand against the overwhelming and unalterable disadvantage that those offices make so little appeal to the popular imagination

that the public in practice ignores them, and leaves the selection of those officials to be settled, without supervision, by anybody who volunteers. Deplore such wanton carelessness if you will, but the public is too big to be spanked. . .

6. WOMEN AND THE SUFFRAGE [1]

The grant of suffrage to women is as yet an experiment confined to the western part of the United States. Mrs. Julia Ward Howe long an advocate of increased political rights for women presents the argument in favor of a wider suffrage as follows.

The question of suffrage for women has passed out of the academic stage, and has become a matter of practical observation and experience in an ever growing number of States and countries. Experience has shattered, like a house of cards, all the old predictions that it would destroy the home, subvert the foundations of society, and have a ruinous influence both on womanly delicacy and on public affairs. During many years the opponents of woman suffrage have been diligently gathering all the adverse testimony that they could find. So far as appears by their published literature, they have not found, in all our enfranchised States put together, a dozen respectable men, residents of those States, who assert over their own names and addresses that it has had any ill effects. A few say that it has done no good, and call it a failure on that ground. But the mass of testimony on the other side is overwhelming.

The fundamental argument for woman suffrage, of course, is its justice; and this would be enough were there no other. But a powerful argument can also be made for it from the standpoint of expediency. It has now been proved to demonstration, not only that woman suffrage has no bad results, but that it has certain definite good results.

[1] Howe, Julia Ward, "The Case for Woman Suffrage." *Outlook*, April 3, 1909; pp. 780–784.

1. It gives women a position of increased dignity and influence. . .

Miss Margaret Long, daughter of the ex-Secretary of the Navy, who has resided for years in Denver, has written: "It seems impossible to me that any one can live in Colorado long enough to get into touch with the life here, and not realize that women count for more in all the affairs of this State than they do where they have not the power that the suffrage gives. More attention is paid to their wishes, and much greater weight given to their opinions and judgment. . ."

2. It leads to improvements in the laws. No one can speak more fitly of this than Judge Lindsey, of the Denver Juvenile Court. He writes: "We have in Colorado the most advanced laws of any State in the Union for the care and protection of the home and the children, the very foundation of the Republic. We owe this more to woman suffrage than to any one cause. It does not take any mother from her home duties to spend ten minutes in going to the polls, casting her vote, and returning to the bosom of her home; but during those ten minutes she wields a power which is doing more to protect that home, and all other homes, than any other power or influence in Colorado. . ."

3. Women can bring their influence to bear on legislation more quickly and with less labor by the direct method than by the indirect. In Massachusetts the suffragists worked for fifty-five years before they succeeded in getting a law making mothers equal guardians of their minor children with the fathers. After half a century of effort by indirect influence, only twelve out of our forty-six States have taken similar action. In Colorado, when the women were enfranchised, the very next Legislature passed such a bill.

4. Equal suffrage often leads to the defeat of bad candidates. This is conceded by Mr. A. Lawrence Lewis, whose article in the *Outlook* against woman suffrage in Colorado has been reprinted by the anti-suffragists as a tract. He says:

"Since the extension of the franchise to women, political

parties have learned the inadvisability of nominating for public offices drunkards, notorious libertines, gamblers, retail liquor dealers, and men who engage in similar discredited occupations, because the women almost always vote them down." During the fifteen years since equal suffrage was granted no saloon-keeper has been elected to the Board of Aldermen in Denver. Before that it was very common. I quote again from Governor Shafroth, of Colorado: "Women's presence in politics has introduced an independent element which compels better nominations. . ."

5. Equal suffrage broadens women's minds, and leads them to take a more intelligent interest in public affairs. President Slocum, of Colorado College, Enos A. Mills, the forestry expert, Mrs. Decker, and many others bear witness to this. The Hon. W. E. Mullen, Attorney-General of Wyoming, who went there opposed to woman suffrage and has been converted, writes: "It stimulates interest and study, on the part of women, in public affairs. Questions of public interest are discussed in the home. As the mother, sister, or teacher of young boys, the influence of woman is very great. The more she knows about the obligations of citizenship, the more she is able to teach the boys." A leading bookseller of Denver says he sold more books on political economy in the first eight months after women were given the ballot than he had sold in fifteen years before.

6. It makes elections and political meetings more orderly. The Hon. John W. Kingman, of the Wyoming Supreme Court, says: "In caucus discussions the presence of a few ladies is worth a whole squad of police."

7. It makes it easier to secure liberal appropriations for educational and humanitarian purposes. In Colorado the schools are not scrimped for money, as they are in the older and richer States. So say Mrs. Grenfell, General Irving Hale, and others.

8. It opens to women important positions now closed to them because they are not electors. Throughout England, Scotland, Ireland, and a considerable part of Europe a host of

women are rendering admirable service to the community in offices from which women in America are still debarred.

9. It increases the number of women chosen to such offices as are already open to them. Thus, in Colorado women were eligible as county superintendents of schools before their enfranchisement; but when they obtained the ballot the number of women elected to those positions showed an immediate and large increase.

10. It raises the average of political honesty among the voters. Judge Lindsey says: "Ninety-nine per cent of our election frauds are committed by men."

11. It tends to modify a too exclusively commercial view of public affairs. G. W. Russell, Chairman of the Board of Governors of Canterbury College, New Zealand, writes: "Prior to women's franchise the distinctive feature of our politics was finance. Legislative proposals were regarded almost entirely from the point of view of (1) What would they cost? and (2) What would be their effect from a commercial standpoint? The woman's view is not pounds nor pence, but her home, her family. In order to win her vote, the politicians had to look at public matters from her point of view. Her ideal was not merely money but happy homes and a fair chance in life for her husband, her intended husband, and her present or prospective family."

12. Last, but not least, it binds the family more closely together. I say this with emphasis, though it is in direct opposition to an argument much brought forward by the opponents of woman suffrage. Let us give ear to words that are written, like the last, from a region where equal suffrage has been tried and proved.

The Hon. Hugh Lusk, ex-member of the New Zealand Parliament, says: "We find that equal suffrage is the greatest family bond and tie, the greatest strengthener of family life. It seemed odd at first to find half the benches at a political meeting occupied by ladies; but when men have got accustomed to it they do not like the other thing. When they found that they could

take their wives and daughters to these meetings, and afterwards go home with them and talk it over, it was often the beginning of a new life for the family — a life of ideas and interests in common and of a unison of thought. . ."

7. AN ARGUMENT AGAINST WOMAN SUFFRAGE [1]

Even among those who would have their political rights extended by the grant of suffrage to women there is difference of opinion as to whether the move would be desirable. It is contended that the demand is neither logically well founded nor counselled by the results in those states which have adopted the proposed change.

The question of woman suffrage can no longer be treated with indifference — it has already become a practical question. If women are to assume the duty of suffrage, they must either add it to their other duties or lay aside other duties to take up this new duty. Would either alternative be just to the women themselves and the community at large? It is for us to decide. Indifference is practically an influence in favor of the movement; we should seriously, in the light of a sacred duty, consider what the issue portends for ourselves and our fellow-beings.

"Rights" is a word of much sound, but little meaning — since everybody's rights stop where another's commence, if there be a conflict between them. We are to consider a question of rights, woman's rights, the suffragists call it, but let us look into it and we see a threefold aspect: the rights demanded by the women who advocate suffrage; the rights of those women who oppose the movement; the rights of the community at large, the Commonwealth, the nation.

We are to determine whether the claim of the first class to a natural, inherent right to vote, and its demand to exercise that

[1] M'Intire, Mary A. J., *Of What Benefit to Women?* Pamphlet printed by the Massachusetts Association Opposed to Extensions of Woman Suffrage (excerpt).

right, are: first, just; second, expedient; that is, not in conflict, but in harmony, with the rights of the others. . . As to the justice of their claim to an inherent, natural right of which they are deprived, we answer that the right of suffrage is not inherent or inalienable. In all political history there is not one phrase which could be construed into meaning that men have the right of suffrage because they are human beings. Society does not exist by the consent of those who enter it. Our government was established long before the present generation existed; so the consent of the governed must be taken for granted (except as changes are made by constitutional methods) until a rebellion arises.

A government exists to secure the safety and best welfare of all who look to it for protection. The assumption that suffrage is a natural right is anti-republican, since the very essence of republicanism is that power is a trust to be exercised for the common weal, and is forfeited when not so exercised, or when exercised for private or personal ends. To deny this is to imply that our government is a pure, unmitigated democracy, which may be interpreted in two ways — either as tantamount to no government, or as the absolute despotism of the ruling majority in all matters. This is not American republicanism certainly, since republicanism has always aimed to restrain the absolute power of majorities and protect minorities by constitutional provisions.

Suffrage cannot be the right of the individual, because it does not exist for the benefit of the individual, but for the benefit of the state itself. "Unless a doctrine is susceptible of being given practical effect, it must be utterly without substance" (Cooley's *Constitutional Law*); and this doctrine of inherent right cannot be given practical effect, since this would imply that minors, insane, idiots, Indians, and Chinese (now wholly or partially restrained) would have a right to exercise the franchise. A gift from nature must be absolute, and not contingent upon the state to prescribe qualifications, the possession of which shall be

the test of right of enjoyment; and no restrictions of age or education could be put upon it, such as now exist. Liberty itself must come from law, and cannot, in any institutional sense, come from nature. Rights, in a legal sense, are born of restraints, by which every one may be protected in this enjoyment within prescribed limits. In prescribing limitations the framers of the constitution showed that they did not consider suffrage an inherent right. The article of the bill of rights which refers to inalienable rights has nothing whatever to say about suffrage.

The suffragists claim that women are taxed without representation. Those advancing this argument exhibit their entire lack of understanding of the theories of taxation and suffrage, and prove that they, at least, are not yet ready to enter intelligently into politics. . .

The duty of voting is in no sense dependent — in this state at least — upon the fact that the voter pays taxes or owns property. A man who has no property has the same voice in voting as a millionaire! Property of a town, city, or state is justly liable for the current expenses of the government which protects such property, and thus increases and preserves its value. The only question the law asks is: "Is there property?" If so, it imposes a tax. The laws of taxation are general, and not particular, taxation being simply a compensation to the government for protection of property, that such property may have value. Woman's property receives exactly the same protection as man's, and she benefits as much thereby; there is therefore no injustice to her.

Minors are taxed without being able to vote, and there are more minors than voters. Men between eighteen and twenty-one could quite as justly as women consider themselves wronged, for they are by a large majority capable of voting intelligently; so also could those who are taxed upon property placed where they cannot vote. Women enjoy all the rights of citizens, protection of property, use of public institutions, roads, gas, postal

facilities, etc. A vote would not protect her property, since two women with no property interests could more than annul her vote by theirs. There is not a single interest of women which is not shared by men. What is good for men — what protects their interests also protects women's. We may look to men to further what in their judgment seem the best interests of life and property, and in doing this they protect both man's and woman's interests because they are inseparable.

Since women have not — for men have not — any natural right to vote, and cannot claim it on the ground of taxation without representation, it remains to be seen whether they can demand it on the ground of expediency. The pointing out of benefits always rests with those who demand a radical change in a system of government; not pointing out only, but proving. Will the franchise extended to women — first, benefit the whole community? second, gain definite benefits for women, which cannot be obtained in the existing order of things?

The remonstrants to woman's suffrage cannot find stated in all the suffragists' arguments one definite, certain benefit to result to either state or woman. On what grounds of expedience do the suffragists demand the ballot? First, that society would gain, because woman would reform politics. The cause of temperance would be promoted by their vote. Woman's voice would abolish war. Second, that women would gain, since the ballot would be to them an educational factor. The problem of woman's wages would be solved.

Would women reform politics? Let us see! In this country it is not a question, as it is in England, of the relatively intelligent and responsible women being allowed a share in the government. England restricts the use of the ballot (by women) in municipal affairs to those who pay rates and taxes in their own names. In our country where manhood suffrage exists it follows that if suffrage belongs to women at all, it belongs to all; suffrage must be given to all women or none, and such is the final proposition of the suffragists. If the franchise were granted to

women in America, all women of legal age, sound mind, and not disfranchised for special causes (now applying to men) could vote; not only the intelligent and those unburdened by home and business duties, but all women without respect to race, character, or intelligence.

We must not overlook or leave out the densely ignorant, the supinely indifferent, the trivial, the "occupied" women — out and out bad women (60,000 in New York City alone). The suffragists say, "Yes, that is true also of man;" but it is surely evident that existing evils should not be added to simply because they exist, or that two unintelligent, bought, or corrupt votes are worse than one — on the simple ground of unnecessary outlay of means and energy, if nothing else. If the great mass of ignorant women's votes are added to the great mass of ignorant men's votes, there will be constant unwise demands for work, money, bread, leisure, in short, "all kinds of laws to favor all kinds of persons." Colonel Higginson (who makes no positive claims for woman suffrage, save on the ground of natural right) acknowledges that "the ground taken that woman as woman would be sure to act on a higher plane than man as man is now urged less than formerly, the very mistakes and excesses of the agitation itself having partially disproved it;" and again — "while the sympathies of women are wholly on the side of right, it is by no means safe to assume that their mode of enforcing that sentiment will be equally judicious."

As for temperance — there must be taken into consideration not only its advocates, and on the other hand those women who favor license through depravity (the most difficult class to deal with, *vide* kitchen bar-rooms in no-license cities), but the countless number of foreign-born women brought up where liquors are used, and not abused, who would feel themselves cramped in their liberties under no-license law.

"Woman's voice would abolish war." The Civil War was stimulated and encouraged by women in the north; and it is generally conceded that but for the women of the south it would

have sooner ended. A suffragist is responsible for the statement that a mayor of a leading southern city lays the survival of duelling anywhere in the south to the sustaining public sentiment of women. I cannot better sum up the illusory nature of the benefits proposed by the suffragists than in again quoting from Colonel Higginson. In an article devoted to "Too much Prediction," he says: "I am persuaded that at present we indulge in too many bold anticipations!"

We come to the question of the gain to woman personally. Is there anything to be gained which cannot be brought about with the existing franchise? The suffragists say: 1. Women will be educated by the ballot. 2. The problem of woman's wages will be solved. In regard to their first claim we need only ask, Has the ballot proved of much educational value to men; then what are the probabilities as regards women?

The problem of woman's wages! The ballot could not help the working girl in the way the suffragists claim, since legislation affects the business of the country only in a general way, helping or hurting all the workers alike in any special industry. The question of wages is one of supply and demand simply! So the general wages of women will always depend greatly on the amount of skill acquired by the mass of them. What especially affects woman's wages is the temporary character of her work! The average age of working women is twenty-two years, as determined by government investigation. You see what this means — that the ranks are constantly being filled up with raw, untrained girls, while those who have attained to some degree of skill are constantly dropping out.

The natural expectation of every normal girl should be that sooner or later she will marry and leave her work; therefore, there is not that incentive that men have to become highly skillful; and the character of her work is, consequently, not so high generally speaking, as men's, lacking as it does, two factors, time and incentive, to develop great skill. Then, since the majority of women take up work with the intention — conscious

or unconscious — of devoting only a part of their lives to it, they naturally gravitate to such work as can be most easily made a temporary occupation, and competition comes in to help complicate the wage question. . .

We have left one argument for granting woman the suffrage; namely, that a majority of women not wishing to vote should not be a sufficient reason for depriving a minority of an inborn right. We have summed up the other arguments for the franchise and shown what is to be said in their refutation; but this last argument, it seems to me, contains the gist of the whole question that is, wherein the demands of the suffragists and the anti-suffragists clash. We have shown their error in claiming the franchise as an inherent right, but even were we to grant that such a right existed, it would still be perfectly within the power of the state to deprive women of this right, if by granting it the general good would be imperiled. We know that the state holds authority to deprive citizens of the right of property, of liberty, of life itself, if the common weal demand it. The family is the safeguard of the state, and the granting of the suffrage to women tends to weaken this mainstay of the nation by bringing into it elements of discord and disunion; therefore the state would be more than justified in denying women even an inherent right which might prove thus disastrous.

To the rest of the argument we answer that a majority of women believe that their inherent rights and privileges would suffer if the duty of voting were imposed upon them, for the following reasons: because suffrage involves office-holding, which is inconsistent with the duties of most women; because they feel that their obvious duties and trusts — as sacred as any on earth — already demand their best efforts; because the duties cannot be relegated to others; because political equality will deprive woman of special privileges hitherto accorded to her by law; because they hold that the suffrage would lessen rather than increase their influence for good.

Suffrage involves office-holding. If women vote, they ought

also to hold office, and assume the working duties incident to office. A system which tends to the dissolution of the home is more perilous to the general good than any other form of danger, and office-holding is, on the face of it, incompatible with woman's proper discharge of her duties as wife and mother. There is too little stress laid on this. No theory of womanly life is good for anything which undertakes to leave out the cradle.

We cannot ignore the fact that nature has imposed upon woman the duty of bearing and rearing the race, and in so doing, has unfitted her (for a number of years at least) for holding political office.

Many women there are, it is true, who are not wives and mothers and if women vote, there will be more of them. When political rewards are held out as the price of services in public life, many women — and those of the brightest — will be tempted to forego marriage and motherhood for the sake of winning them. . .

Finally we oppose the suffrage for women, because we feel that we have more influence without it. There is not a single subject in which woman takes an intelligent interest in which she cannot exert an influence in the community proportionate to her character and ability. Without the ballot, women have obtained more than mere justice in Massachusetts. The number of women who want the ballot for itself is reduced to a mere handful when we take away those who are working for temperance or other worthy causes. How much more would be gained by advocating these causes on their own merits!

The influence of woman standing apart from the ballot is immeasurable. Men look to her then (knowing that she has no selfish, political interest to further) as the embodiment of all that is truest and noblest. She has influence with all parties alike; if a voter, she would have only the influence of her own party, even the woman's vote being divided against itself. We believe that it is of vital importance that our sex should have no political ends to serve!

8. THE NEGRO'S RIGHT TO VOTE: ITS DENIAL [1]

Due to the fact that the provisions of the constitution which protect the negro in his right to vote are directed against only state action, and even then only reach discrimination on account of race, color, and previous condition of servitude, it has been possible for the southern states practically to eliminate the influence of the colored voter in elections.

First, how far is it practicable for the white people of any State to deny or abridge the right of suffrage of such inhabitants of that state as have negro blood in their veins because they have such negro blood? Second, what can the Federal Government do to prevent discrimination on such ground?

The first of these questions may be answered by saying that in 1900 there were in the two States of South Carolina and Mississippi 350,796 adult male negroes. The aggregate number of votes returned in both states for the Roosevelt and Fairbanks electoral ticket was 5443. At least 2000 of these 5443, and perhaps more, must have been cast by white men. It follows that in those states not more than one adult male negro out of every 100 voted for President. It is clear, therefore, that it has in fact been possible for the white inhabitants of some of the states, for a time at least, so to abridge the right of suffrage on the ground of race and color as to deny that right substantially to all negroes.

In the teeth of the provisions of the Federal Constitution how has this result been brought about? Why is it that the disfranchised race has not been able successfully to appeal for protection to the letter and spirit of the Federal Constitution. Answering generally, it may be said: first, because the powers of the Federal Government are limited; and, second, because Congress has not exercised those powers which the Federal Government has.

[1] Rose, J. C., "Negro Suffrage." *American Political Science Review*, Vol. I, 1906–1907; p. 17 *et seq.*

The Fourteenth and Fifteenth Amendments both expressly confer upon the Congress the power to enforce them by appropriate legislation. The Supreme Court has held, and has been clearly right in holding, that the power to enforce cannot be extended beyond that which is to be enforced. Neither of those amendments deal in any wise with the action of individuals in their individual capacity. They are both prohibitions upon the states or the United States. Beyond that they do not go, and Congress in enforcing them can do no more than to insure as best it may that the states shall not in any way or by any instrumentality deny to their colored citizens the equal protection of the laws or deny or abridge the right of suffrage on account of race, color, or previous condition of servitude.

Congress cannot provide for the punishment of individuals who, having no official position and exercising none of the powers of the State, prevent a colored voter from voting, or deny to him the equal protection of the laws. . .

The Fifteenth Amendment does not prescribe qualifications for suffrage. That it leaves to the several States. They may make any they see fit, provided they do not deny or abridge the right of suffrage on account of race, color, or previous condition of servitude.

A much larger proportion of whites than blacks may possess any particular qualification. That fact alone is no argument at all against the right of a State to prescribe it. The qualification may be one which reasonable people may think desirable, irrespective of whether the State has or has not any negro inhabitants at all.

In South Carolina a simple educational qualification enforced with entire honesty and strict impartiality would disfranchise 60,000 or 70,000 more negroes than whites. Under universal manhood suffrage there would be a negro majority in that State of upward of 20,000. If the right to vote was limited to those adult males who can both read and write, there would be a white majority of nearly 45,000.

Connecticut, in its Constitution, declares that no one shall vote unless he is able to read any section of the Constitution or of the statutes of the States in the English language and write his name. What Connecticut can do, so can South Carolina. . .

No man can vote in Pennsylvania unless at least one month before the election he has paid his poll or other tax. The amount of the poll tax and the time at which it must be paid each State may prescribe for itself. If Alabama sees fit to fix it at $1.50 a year and to require that every voter must, six months before the day of election, have paid all poll taxes assessed against him for each and every year since 1900, it can do so. The payment of such a tax by other persons than the voter may easily be a form of bribery and corruption. The State may, therefore, properly require the voter to pay his poll tax in person. Such requirements in Alabama would close the door of the polling room to more blacks than whites. . .

All the southern states which have recently adopted new constitutions make the payment of a poll tax a condition precedent to the exercise of the right of suffrage. In none of the states is the annual tax less than one dollar. In none greater than two dollars.

North Carolina does not require the payment of any back taxes except those for the year preceding that in which the voter offers to vote. Louisiana and Mississippi provide that he must pay for the preceding two years, and Virginia for the preceding three years. Alabama is content with nothing short of the payment of all poll taxes levied on him since the year 1901.

The clauses of the South Carolina Constitution on the subject are to my reading ambiguous. They may be construed either as requiring the payment of all poll taxes which have been assessed against the voter, or only those for the preceding year. What construction they have received in practice I do not know.

In some of these states at least the poll tax is apparently imposed rather to discourage voting than to raise revenue. Thus

the Constitution of Alabama declares that no legal process or any fee or commission shall be allowed for the collection of the poll tax. Louisiana says that poll taxes shall be a lien only upon assessed property and no process shall issue to enforce the collection of the same except against assessed property. All the states require the payment of these taxes to be made a long time before the election.

In North Carolina, South Carolina, and Virginia the payment must be made at least six months before election day, in Alabama and Mississippi before the first of February preceding the election; and in Louisiana on or before the thirty-first of the preceding December.

Any adult male negro who has not forfeited his right of suffrage by conviction of crime, who has paid his poll taxes as required by law, and who possesses the qualifications of residence required of all other voters is in theory at least entitled to vote in Mississippi if he can read the Constitution of that state; in Virginia, North and South Carolina, and Louisiana if he can read and write; in Alabama if he can read and write and has been regularly engaged in some lawful employment, business, occupation, trade, or calling for the greater part of the twelve months preceding the time at which he offers to register; in Louisiana and South Carolina if he be the owner of real and personal property assessed at $300, whether he can read and write or not; and in Alabama, though he cannot read or write, and whether he has been employed or not, if he or his wife own forty acres of land on which they live, or if either he or she have real or personal property of the assessed value of $300, or more.

A negro Republican in any one of those States would very probably reply that however reasonable the qualifications may seem in theory, in practice there are so many difficulties thrown by the registration officers in the way of the registration of negro voters that none except those who have a liberal allowance of time, patience, persistence, intelligence, and money can succeed in getting on the registration books. He might refer to such a

provision as that of the Alabama Constitution which authorizes the register to require the applicant to state under oath the name or names of all his employers for the last five years, and makes any wilfully false answer perjury. He might not unreasonably contend that the purpose of such a provision was to render it almost impossible for negro laborers safely to apply for registration. This may be true, but if true it is not relevant to the inquiry whether it is within the power of the state to prescribe the qualifications it has prescribed. . .

Speaking generally, it may be said that in every one of the six southern states which have adopted new constitutional regulations for the suffrage, those regulations have been so framed or administered that no white man who was a voter at the time they went into effect has been disfranchised by them. Sometimes the white voters have been protected by the very terms of the new constitutions. Thus, Louisiana and North Carolina declare that all men who were voters in any state of the Union before January 1, 1867, and in Louisiana the sons and grandsons of such men, not less than 21 years of age in 1898, and in North Carolina all lineal descendants of such men who were or may become voters before 1908 shall remain for life qualified to vote in spite of the fact that they may not possess either the educational or the property qualifications, one or the other of which is required of all other voters.

Every one knows that this so-called "grandfather clause" was devised solely for the purpose of exempting all white men from the necessity of showing that they possessed those qualifications which were required of all negroes. It is possible to argue that the ability to vote in such manner as is conducive to the best interests of the state may in some rough and general way be hereditary. This was a contention, however, which was made when the Fifteenth Amendment was under consideration, and the adoption of that Amendment decided it finally in the negative.

If North Carolina and Louisiana forms of the "grandfather

clause" shall come before the Supreme Court of the United States in such a way as to make it the right and duty of that court to pass upon their validity, I personally believe that they will be held invalid.

The corresponding clause in Virginia is more skillfully drawn. It authorizes the registration of every non-property owning illiterate, who prior to the adoption of the new Constitution of Virginia had served in time of war in the army or the navy of the United States, or of the Confederate States, or who is a son of any one who did so serve. While this qualification in Virginia is possessed by many more white than black men it would include an appreciable number of the latter. It might, therefore, very possibly be held valid. . .

In Alabama, in addition to the "grandfather clause" already referred to, the boards of registry were given the opportunity to protect white voters by a provision that in addition to those qualified under the "grandfather clause" the only persons who should be entitled to vote upon the adoption of the new Constitution were those persons who were of good character and who understood the duties and obligations of citizenship under a republican form of government. On the face of this qualification what could be fairer? No one ought to vote who is not of good character, and who does not understand the duties and obligations of citizenship under a republican form of government. How fortunate is the state which can organize in each county a board of registry capable of determining who among their fellow-citizens are and who are not of good character, and who do and who do not understand the duties and obligations of citizenship under a republican form of government!

We all know why this unlimited discretion was given to the Board of Registry in Alabama. Yet the constitution of Connecticut has since 1818 required that an elector in that state shall sustain a good moral character. For upward of a century the constitution of Vermont has declared that only persons of quiet and peaceable behavior shall be admitted to be freemen in any

town of that state. It is true that no one has heard that in either Connecticut or Vermont any one, except possibly some utterly notorious offender, has ever been disfranchised because he was not of good moral character, or was not of quiet and peaceable behavior. There is much reason to believe that in Alabama a very large number of persons were unable to convince the Board of Registry that they were of good character and that they understood the duties and obligations of citizenship under a republican form of government, or at all events that they would have been unable to convince the Board of Registry had they thought it worth while to try to do so. On its face, however, this provision is not a discrimination on account of race, color, or previous condition of servitude.

IX. Party Problems and Remedies

1. Party Influence in Federal Appointments [1]

Considerations of party expediency have transformed the appointing power of the President. Responsibility for the character of the administration required that the President should control the officers charged with carrying out his policies. The advice of the senate taken in the filling of offices was not intended to control the appointments and virtually dictate them. The growth of party control has however shifted the balance of power in choosing appointive officials to the upper house.

As the President is charged with the whole Federal administration, and responsible for its due conduct, he must of course be allowed to choose his executive subordinates. But as he may abuse this tremendous power the Constitution associates the Senate with him, requiring the "advice and consent" of that body to the appointments he makes. This confirming power has become a political factor of the highest moment. The framers of the Constitution probably meant nothing more than that the Senate should check the President by rejecting nominees who were personally unfit for the post to which he proposed to appoint them. The Senate has always, except in its struggle with President Johnson, left the President free to choose his cabinet ministers. But it early assumed the right of rejecting a nominee to any other office on any ground which it pleased, as, for instance, if it disapproved his political affiliations, or wished to spite the President. Presently the senators from the State wherein a Federal office to which the President had made a nomi-

[1] Bryce, J., *The American Commonwealth*. Macmillan, New York, 1910; Vol. I, pp. 61–65.

nation lay, being the persons chiefly interested in the appointment, and most entitled to be listened to by the rest of the Senate when considering it, claimed to have a paramount voice in deciding whether the nomination should be confirmed. Their colleagues approving, they then proceeded to put pressure on the President. They insisted that before making a nomination to an office in any State he should consult the senators from that State who belonged to his own party, and be guided by their wishes. Such an arrangement benefited all senators alike, because each obtained the right of practically dictating the appointments to those Federal offices which he most cared for, viz. those within his own State; and each was therefore willing to support his colleagues in securing the same right for themselves as regarded their States respectively. Of course when a senator belonged to the party opposed to the President, he had no claim to interfere, because places are as a matter of course given to party adherents only. When both senators belonged to the President's party they agreed among themselves as to the person whom they should require the President to nominate. By this system, which obtained the name of the Courtesy of the Senate, the President was practically enslaved as regards appointments, because his refusal to be guided by the senator or senators within whose State the office lay exposed him to have his nomination rejected. The senators, on the other hand, obtained a mass of patronage by means of which they could reward their partisans, control the Federal civil servants of their State, and build up a faction devoted to their interests. Successive Presidents chafed under the yoke, and sometimes carried their nominees either by making a bargain or by fighting hard with the senators who sought to dictate to them. But it was generally more prudent to yield, for an offended senator could avenge a defeat by playing the President a shrewd trick in some other matter; and as the business of confirmation is transacted in secret session, intriguers have little fear of the public before their eyes. The senators might, moreover, argue that they knew best what would

strengthen the party in their State, and that the men of their choice were just as likely to be good as those whom some private friend suggested to the President. Thus the system throve and still thrives, though it received a blow from the conflict in 1881 between President Garfield and one of the New York Senators, Mr. Roscoe Conkling. This gentleman, finding that Mr. Garfield would not nominate to a Federal office in that state the person he proposed, resigned his seat in the Senate, inducing his co-senator Mr. Platt to do the same. Both then offered themselves for re-election by the State Legislature of New York, expecting to obtain from it an approval of their action, and thereby to cow the President. The State Legislature, however, in which a faction hostile to the two senators had become powerful, rejected Mr. Conkling and Mr. Platt in favour of other candidates. So the victory remained with Mr. Garfield, while the nation, which had watched the contest eagerly, rubbed its hands in glee at the unexpected dénouement.

It need hardly be added that the "Courtesy of the Senate" would never have attained its present strength but for the growth, in and since the time of President Jackson, of the so-called Spoils System, whereby holders of Federal offices have been turned out at the accession of a new President to make way for the aspirants whose services, past or future, he is expected to requite or secure by the gift of places.

The right of the President to remove from office has given rise to long controversies on which I can only touch. In the Constitution there is not a word about removals; and very soon after it had come into force the question arose whether, as regards those offices for which the confirmation of the Senate is required, the President could remove without its consent. Hamilton had argued in the *Federalist* (though there is reason to believe that he afterwards changed his opinion) that the President could not so remove, because it was not to be supposed that the Constitution meant to give him so immense and dangerous a reach of power. Madison argued soon after the adoption of

the Constitution that it did permit him so to remove, because the head of the executive must have subordinates whom he can trust, and may discover in those whom he has appointed defects fatal to their usefulness. This was also the view of John Marshall. When the question came to be settled in the Senate during the presidency of Washington, Congress, influenced perhaps by respect for his perfect uprightness, took the Madisonian view and recognized the power of removal as vested in the President alone. So matters stood till a conflict arose in 1866 between President Johnson and the Republican majority in both Houses of Congress. In 1867 Congress, fearing that the President would dismiss a great number of officials who sided with it against him, passed an Act, known as the Tenure of Office Act, which made the consent of the Senate necessary to the removal of office-holders, even of the President's (so-called) cabinet ministers, permitting him only to suspend them from office during the time when Congress was not sitting. The constitutionality of this Act has been much doubted, and its policy is now generally condemned. It was a blow struck in the heat of passion. When General Grant became President in 1869, the Act was greatly modified, and in 1887 it was repealed.

How dangerous it is to leave all offices tenable at the mere pleasure of a partisan Executive using them for party purposes, has been shown by the fruits of the Spoils System. On the other hand a President ought to be free to choose his chief advisers and ministers, and even in the lower ranks of the civil service it is hard to secure efficiency if a specific cause, such as could be proved to a jury, must be assigned for dismissal.

The Constitution permits Congress to vest in the Courts of Law or in "the heads of departments" the right of appointing to "inferior offices." This provision has been used to remove many posts from the nomination of the President, and by the Civil Service Reform Act of 1883 competitive examinations were instituted for about 34,000. Of the now enormous number of posts — there were, in 1909, 367,794 officers and employees of

the executive civil service — nearly two-thirds were in that year subject to such examinations. A great number, however, including many postmasterships and many places under the Treasury, remain in the gift of the President; while even as regards those which lie with his ministers, he may be invoked if disputes arise between the minister and politicians pressing the claims of their respective friends. The business of nominating is in ordinary times so engrossing as to leave the chief magistrate of the nation little time for his other functions.

Artemus Ward's description of Abraham Lincoln swept along from room to room in the White House by a rising tide of office seekers is hardly an exaggeration. From the 4th of March, when Mr. Garfield came into power, till he was shot in the July following, he was engaged almost incessantly in questions of patronage. Yet the President's individual judgment has little scope. He must reckon with the Senate; he must requite the supporters of the men to whom he owes his election: he must so distribute places all over the country as to keep the local wire-pullers in good humour, and generally strengthen the party by "doing something" for those who have worked or will work for it. Although the minor posts are practically left to the nomination of the senators or congressmen from the State or district, conflicting claims give infinite trouble, and the more lucrative offices are numerous enough to make the task of selection laborious as well as thankless and disagreeable. In every country statesmen find the dispensing of patronage the most disagreeable part of their work; and the more conscientious they are, the more does it worry them. No one has more to gain from a thorough scheme of civil service reform than the President. The present system throws work on him unworthy of a fine intellect, and for which a man of fine intellect may be ill qualified. On the other hand the President's patronage is, in the hands of a skilful intriguer, an engine of far-spreading potency. By it he can oblige a vast number of persons, can bind their interests to his own, can fill important places with the men of his choice.

The authority he has over the party in Congress, and therefore over the course of legislation, the influence he exerts on his party in the several States, and therefore over the selection of candidates for Congress, is strengthened by his patronage. Unhappily, the more his patronage is used for these purposes, the more it is apt to be diverted from the aim of providing the country with the best officials.

2. MACHINE POLITICS IN THE LINCOLN ADMINISTRATION [1]

Party control of appointments, made possible by party control of the senate, became by the middle of the nineteenth century so strong an influence that not even President Lincoln could resist its force. He felt that some of the appointments he was constrained to make contradicted the principles for which he had stood through all his life.

"Machine Politics" on a large scale began with the opening of the Civil War. Prior to that time, the operations of all our governments, national, state, and local, involved the handling of comparatively small amounts of money. Then, for the first time, did the operations of the national government furnish a field for fraud and corruption on a large scale. Then, for the first time, under the administration of Mr. Lincoln, we have the evidence of the omnipotence of the election machine.

In connection with the facts now to be related, we must continually bear in mind that Mr. Lincoln's purity of purpose — his personal integrity — and his sincerity and earnestness in using the powers of his office for what he deemed the highest public interests are universally conceded. Consequently, we are compelled to conclude, that if he was unable to resist the power of the election machine, that power is practically irresistible.

Immediately after Mr. Lincoln's election began the inevitable

[1] Stickney, A., *Organized Democracy.* Houghton, New York, 1906; p. 118 *et seq.*

division of the "spoils," which has been, for well-nigh a century, the invariable sequel of the election of a new President.

Mr. Lincoln's nomination, as is well known, was procured by a political barter. It is a well-authenticated fact, that a bargain had been made by Mr. Lincoln's political friends, at the Chicago convention which nominated him, that the vote of the Pennsylvania delegation in that convention should be paid for — by the appointment of Simon Cameron to a seat in the Cabinet. Whether or not Mr. Lincoln knew and approved the bargain before his election, has been questioned. But it is the historic fact, that he carried out the bargain afterwards, with full knowledge of the facts, by making Mr. Cameron his Secretary of War.

Mr. Lincoln did this in opposition to the remonstrances of a number of the most reputable men in his own party. Those men represented to Mr. Lincoln, that the character and reputation of Mr. Cameron were so bad, that no administration could endure the disgrace of such appointment. . .

Mr. Lincoln's own opinion of Mr. Cameron was so bad as to make him think that the mere appointment of Mr. Cameron by him to a cabinet position would of itself destroy his own great reputation for honesty. According to his biographer, he said: —

> All that I am in the world — the Presidency and all else — I owe to that opinion of me which the people express when they call me Honest Old Abe. Now what will they think of their *honest* Abe when he appoints Simon Cameron to be his familiar adviser?

At the time of Mr. Cameron's appointment, we were at the opening of a great war, on which depended the nation's existence. The War Secretaryship was the most important office in the nation. It demanded a man of great ability, and of unquestioned integrity. Success in the war would be largely a matter of money. Upright and able administration of the War Office was certain to be the most important thing in the entire administra-

tion. Nevertheless, Mr. Lincoln gave the headship of the War Office to a man who was notoriously and scandalously corrupt. Of that fact he was fully advised in advance. . .

As already said, Mr. Lincoln's purity of purpose and earnestness of endeavor are conceded on all hands. We must assume, that he did everything in his power to insure an honest administration of our national affairs. For he, and every intelligent man, well understood that success in putting down the rebellion was largely a question of money; and that it was of vital necessity that the strictest economy should be used in the management of our Army and Navy, and of the nation's finances.

Bearing all that in mind, let us see what were the practical results of his so-called "political appointments."

The government was compelled to purchase large quantities of material of all kinds, arms and supplies for the Army, and vessels for the transport service and the Navy. . .

The purchasing of vessels for the Navy Department at the port of New York was taken from the commandant of the navy-yard there, and transferred to a man of whom a House of Representatives Committee say, that he had

never had the slightest experience in the new and responsible duties which he was called upon to discharge, either in the naval service, the building or buying and selling of ships, or in any pursuit calling for a knowledge of their construction, capacity, or value, never having spent an hour in either. . .

Five thousand carbines belonging to the government were sold to a private individual for $3.50 apiece, and were immediately repurchased for the government for $22 apiece, making a difference on this one transaction of nearly $90,000. One lot of these carbines went through this process of sale and repurchase twice. They were first sold by the government at a price merely nominal, and were repurchased at $15 apiece. They were again sold by the government at a price above stated, of $3.50, and again repurchased at $22. How many other times these arms

did service under the purchase and sale treatment, or whether they ever did service in the field, did not appear.

A certain contractor testified that he furnished supplies to the government to the amount of $800,000, on which he made a profit of over forty per cent. The purchases from him were made in direct violation of law. . .

Two steamers were purchased by a friend of high government officials for about one hundred thousand dollars, and were immediately sold to the government for two hundred thousand dollars. One steamer was chartered to the government for two thousand five hundred dollars a day; and the government paid one hundred and thirty-five thousand dollars for a period during which she lay at a wharf before she was ever once used. One railroad company received for transportation in one year from the government over three million five hundred thousand dollars, being an excess over the company's entire earnings for the previous year of one million three hundred and fifty thousand dollars, or about forty per cent. And the rates charged for this transportation were about thirty-three and one-third per cent in excess of the rates paid by private individuals. The brother-in-law of the president of this railroad company was Mr. Lincoln's Secretary of War.

These are merely single instances of the way in which the People's money was wasted by the party leaders and their political supporters. . .

But political influence went further than controlling the treasury and the War and Navy departments. It controlled the appointment of our generals. Machine politicians aspired to the glory of the soldier, for political purposes. They were men without either education or experience. One of them at least had never in his life so much as handled a battalion or a company on a parade ground. Men of this kind were given generals' commissions, and the command of armies; and through their ignorance and incapacity thousands of better men than themselves lost their lives.

In all departments, throughout the war, the plunder of the treasury by machine politicians proceeded on true machine principles. The people's offices were used, not for the service of the people, but for the service of the election machine, to reward machine men for machine work.

3. LIMITING PARTISAN ACTIVITY OF OFFICEHOLDERS. UNITED STATES CIVIL SERVICE COMMISSION, JULY, 1910[1]

The evil effect of the "spoils system" upon our public life has aroused men interested in good government to persistent effort to remove from active party work those who are in government service. Public offices must not be made the forts of the party army. The rules limiting the evil of the activity of officeholders, prescribed by the Civil Service Commission, have been an important influence in eliminating abuses.

I. *Political Activity*

Activity of competitive employees and laborers forbidden: Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns. (Rule I, sec. 1.)

Temporary employees are held to be within the restrictions of the rule.

On May 14, 1908, the Navy Department issued the following circular letter to commandants of navy-yards and naval stations:

Laborers and mechanics at the yard or station under your command will be subject to discharge for political activity in the same manner as competitive classified employees.

Similar instructions have been issued by other departments placing the same limitations in regard to political activity on laborers in the unclassified service as are applied to competitive employees.

The following forms of activity have been held to be forbidden

[1] Pamphlet published by the Civil Service Commission.

by this provision: Service on political committees; service as delegates to county, state, or district conventions of a political party, although it was understood that the employees were not "to take or use any political activity in going to these conventions or otherwise violate the civil-service rules"; service as officer of a political club, as chairman of a political meeting or as secretary of an antisaloon league; continued political activity and leadership; activity at the polls on election day; the publication or editing of a newspaper in the interests of a political party; the publication of political articles bearing on qualifications of different candidates; the distribution of political literature; holding office in a club which takes active part in political campaigns and management; making speeches before political meetings or political clubs; circulation of petitions having political object, of petitions proposing amendments to a municipal charter, of petitions favoring candidates for municipal offices, and of local-option petitions; service as a commissioner of election in a community where it was notorious that a commissioner of election must be an active politician; accepting nomination for political office with intention of resigning from the competitive service if elected; recommendation by clerks and carriers of a person to be postmaster; activity in local-option campaigns; service as inspector of elections, ballot clerk, ballot inspector, judge of election, member of election board; candidacy for or holding of elective office. . .

Restrictions on the political activity of other government officers:

On July 14, 1886, President Cleveland issued the following instructions, which were published at the time as orders by the heads of the several departments:

Officeholders are the agents of the people, not their masters. Not only is their time and labor due to the Government, but they should scrupulously avoid, in their political action, as well as in the discharge of their official duty, offending, by display of

obtrusive partisanship, their neighbors who have relations with them as public officials.

They should also constantly remember that their party friends, from whom they have received preferment, have not invested them with the power of arbitrarily managing their political affairs. They have no right as officeholders to dictate the political action of their party associates or to throttle freedom of action within party lines by methods and practices which pervert every useful and justifiable purpose of party organization.

The influence of federal officeholders should not be felt in the manipulation of political primary meetings and nominating conventions. The use by these officials of their positions to compass their selection as delegates to political conventions is indecent and unfair, and proper regard for the proprieties and requirements of official place will also prevent their assuming the active conduct of political campaigns.

Individual interest and activity in political affairs are by no means condemned. Officeholders are neither disfranchised nor forbidden the exercise of political privileges; but their privileges are not enlarged nor is their duty to party increased to pernicious activity by officeholding.

A just discrimination in this regard between the things a citizen may properly do and the purposes for which a public office should not be used is easy in the light of a correct appreciation of the relation between the people and those intrusted with official place and a consideration of the necessity, under our form of government, of political action free from official coercion.

Under date of June 5, 1902, the commission addressed a letter to the President in which it called attention to the omission in the new postal regulations, issued April 1, 1902, of former section 435, providing that —

Officeholders should not offend by obtrusive partisanship, nor assume the active conduct of political campaigns. . . . This is in consonance with the order of President Cleveland of July 14, 1886.

The commission also called the President's attention to the following statement in its Eleventh Report:

The commission feels strongly that whatever rule is adopted

should apply equally to adherents of all parties, and that it would be safe to adopt as such a rule the requirement that the adherents of the party in power shall never do what would cause friction in the office and subvert discipline if done by the opponents of the party in power. A man in the classified service has the entire right to vote as he pleases and to express privately his opinions on all political subjects, but he should not take any active part in political management or in political campaigns, for precisely the same reasons that a judge, an army officer, a regular soldier, or a policeman is debarred from taking such active part. It is no hardship to a man to require this. It leaves him free to vote, think, and speak privately as he chooses, but it prevents him, while in the service of the whole public, from turning his official position to the benefit of one of the parties into which that whole public is divided; and in no other way can this be prevented.

The commission recommended either that a general executive order upon the subject be issued by the President or that recommendation be made to the heads of departments for the establishment of regulations similar to the post-office regulation which had been omitted.

The following reply was received under date of June 13, 1902:

Gentlemen: As the greater includes the less, and as the executive order of President Cleveland of July 14, 1886, is still in force, I hardly think it will be necessary again to change the postal regulations.

The trouble, of course, comes in the interpretation of this executive order of President Cleveland. After sixteen years experience it has been found impossible to formulate in precise language any general construction which shall not work either absurdity or injustice. Each case must be decided on its merits. For instance, it is obviously unwise to apply the same rule to the head of a big city federal office, who may by his actions coerce hundreds of employees, as to a fourth-class postmaster in a small village, who has no employees to coerce and who simply wishes to continue to act with reference to his neighbors as he always has acted.

As Civil Service Commissioner under Presidents Harrison and Cleveland I found it so impossible satisfactorily to formulate

and decide upon questions involved in these matters of so-called pernicious activity by officeholders in politics that in the Eleventh Report of the commission I personally drew up the paragraph which you quote. This paragraph was drawn with a view of making a sharp line between the activity allowed to public servants within the classified service and those without the classified service. The latter under our system are, as a rule, chosen largely with reference to political considerations, and, as a rule, are and expect to be changed with the change of parties. In the classified service, however, the choice is made without reference to political considerations and the tenure of office is unaffected by the change of parties. Under these circumstances it is obvious that different standpoints of conduct apply to the two cases. In consideration of fixity of tenure and of appointment in no way due to political considerations the man in the classified service, while retaining his right to vote as he pleases and to express privately his opinions on all political subjects, "should not take any active part in political management or in political campaigns for precisely the same reasons that a judge, an army officer, a regular soldier, or a policeman is debarred from taking such active part." This, of course, applies even more strongly to any conduct on the part of such employee so prejudicial to good discipline as is implied in a public attack on his or her superior officers, or other conduct liable to cause scandal.

It seemed to me at the time, and I still think, that the line thus drawn was wise and proper. After my experience under two Presidents — one of my own political faith and one not — I had become convinced that it was undesirable and impossible to lay down a rule for public officers not in the classified service which should limit their political activity as strictly as we could rightly and properly limit the activity of those in whose choice and retention the element of political considerations did not enter; and afterwards I became convinced that in its actual construction, if there was any pretense of applying it impartially, it inevitably worked unevenly, and, as a matter of fact, inevitably produced an impression of hypocrisy in those who asserted that it worked evenly. Officeholders must not use their offices to control political movements, must not neglect their public duties, must not cause public scandal by their activity; but outside of the classified service the effort to go further than this had failed so signally at the time when the Eleventh Report,

which you have quoted, was written, and its unwisdom has been so thoroughly demonstrated that I felt it necessary to try to draw the distinction therein indicated.

Sincerely yours,

THEODORE ROOSEVELT.

II. *Political Coercion*

The civil-service act contains the following provisions:

. . . no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and . . . he will not be removed or otherwise prejudiced for refusing to do so. (Sec. 2, clause 2, par. 5.)

. . . no person in said service has any right to use his official authority or influence to coerce the political action of any person or body. (Sec. 2, clause 2, par. 6.)

The following is a provision of the civil-service rules:

No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. (Rule 1, sec. 1.)

III. *Political Assessments*

The following are provisions of the Criminal Code:

. . . no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said Houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. (Sec. 118.)

. . . no officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in any manner

change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose. (Sec. 120.)

. . . no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. (Sec. 121.)

. . . no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive, any contribution of money or any other thing of value for any political purpose whatever. (Sec. 119.)

Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both. (Sec. 122.)

All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors. (Sec. 335.)

Solicitation by Letter

In the case of U.S. *v.* Edward S. Thayer the Supreme Court, on March 9, 1908, held that solicitation by letter or circular addressed and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building," etc., within the meaning of section 12 of the civil-service act (now section 119 of the Criminal Code), the solicitation taking place where the letter was received.

4. THE PRESENT FEDERAL CIVIL SERVICE AND ITS NEED OF FURTHER REFORM [1]

The large army of federal employees formerly at the service of the party in power has been decreased in size by laws and executive orders which have placed an increasingly large proportion of our public servants under civil service examination. The officeholders are assured fixity of tenure of office during good behavior. Recent administrations have widely extended the number of offices in which this principle applies. Much still remains to be done.

The labors of the National Civil Service Reform League have been rewarded during the administrations of President Roosevelt and President Taft by the attainment of many improvements in the national service. To-day about 294,000 employees of the government are in the classified service, of whom about 226,000 are competitive and most of whom have been appointed for merit and promise demonstrated through adequate examinations and thorough inquiry. About 68,000 persons in the classified service have, however, been appointed on exceptional terms, with exemption from examination or without competitive examination — a grievous fact which cannot but gravely qualify the satisfaction of this League in the results already obtained in the lower grades of the national civil service under existing legislation.

The unclassified service numbers about 61,000 persons, of whom 49,000 are unskilled laborers, and 2,600 are census appointees. Deducting these 51,600 persons from the total of the unclassified service, there remain something more than nine thousand presidential appointees who are subject to confirmation by the Senate, and in this number are included all the higher officers, such as first, second, and third class postmasters, collec-

[1] Eliot, C. W., Annual Address as President of the National Civil Service Reform League, at the meeting Dec. 16, 17, 1910. *Good Government*, New York, January, 1911.

tors of customs and internal revenue, appraisers, district attorneys and marshals, consuls, and diplomatic appointees. These nine thousand are all political appointments, or spoils of victory at the polls. . .

Thus much . . . is clear: — the higher places in the government service, to the number of nine thousand, are inaccessible to the 294,000 men and women who have entered the classified service. However meritorious these subordinate servants of the government may prove themselves to be, they cannot reach higher posts without procuring the active influence of a patron, or without commending themselves in some way to the persons in whose gift the higher offices lie. The original appointments in the classified service are made for merit; but thereafter advance of salary and promotion must be secured, as a rule, by "influence," and the higher parts of the national service are in the main inaccessible to members of the classified service.

It has been an immense gain that the original appointments to 226,000 places have been rescued from the grasp of politicians, and made accessible in a thoroughly democratic way to competent men and women; but so long as promotions generally go by favor, and not by merit, and so long as there are many thousands of persons in the classified service who have been exempted from passing examinations at appointment, or have passed only non-competitive examination, the civil service of the United States cannot be said to offer an attractive life-career to intelligent and ambitious young people, and will remain inferior as a career to many services in this country, already organized and conducted on a merit system by numerous business and educational corporations and charitable or betterment associations. A service which has no system of promotion for merit, and no system of pensions or retiring allowances, and in which all the higher posts are held on short tenures and without personal or official independence, is obviously very inferior not only to most government services in Europe, but to many private and corporate services in the United States, which have already adopted

advancement for merit, insurance against disease and accident, and pensions on disability or old age.

In consequence of this unfortunate condition of things, many young people, of good quality as regards both intelligence and character, enter the national service by examination, serve diligently for a few years, and then, finding themselves cut off from the higher places in their several departments, quit the service of the govenment, and find employment in private or corporation services which are much better organized than the civil service of the national government. By this exodus the government is constantly losing the best part of its employees. The civil service ought, of course, to offer just as satisfactory and honorable a career as the military and naval services offer; but is far from doing so, first, because no system of promotion for merit has ever been contrived for the civil service, and secondly, because the nine thousand posts at the top of the civil service are still political "spoils."

The work of the National Civil Service Reform League has been supposed by many public-spirited persons, who are not acquainted with the facts in the case, to have been practically accomplished; but the truth is, that the work of the League is only well begun, and its most important work remains to be done. . .

It has been the practice of all the administrations since the civil service law was enacted to make appointments to excepted positions in the classified service without conforming to the prescriptions concerning examinations. These exceptions carry into the classified civil service many persons who have given no proper evidence of either capacity or character; and put at the disposition of politicians or other patrons annual salaries to a large amount in total. The commonest argument in favor of these exceptions is that officials who have fiduciary functions want to have assistants selected either by themselves or by friends who have personal knowledge of the candidates. This argument is not a remarkable one. A fiduciary officer will in

most cases get a better assistant, if he is supplied by a civil service commission with a man or woman whose character, habits and mental quality have been subjected to an impartial examination by experienced examiners, than he will procure through his own individual selection. Accordingly, experience concerning delinquencies, neglects, and crimes in the civil service of the United States shows conclusively that they occur among the excepted appointees and in the unclassified service much more frequently than in the competitive, classified service. The best man to trust in a confidential capacity is the man who is not afraid to have his previous training and experience and his capacity and character inquired into by impartial and experienced examiners.

A strong argument in favor of extending the classified service all the way up to those offices which have to do with the determination of the political policies of the government is to be found in the political activity at nominating conventions and elections of the existing unclassified service — that is, of all the higher civil servants of the government. Officials who owe their appointments to political influence, who hold them as rewards for party service, naturally feel under obligations to be active on behalf of the administration, party, "boss," senator, or representative, who gave them their appointments. Every recent national administration has thus far accepted the political services of such officials without restraint during nomination and election campaigns; and there have recently been given striking exhibitions of the effective response of "spoils" civil servants to the call of their respective patrons, seeking to control party conventions in the state of New York and in several of the Southern States. Several Presidents have forbidden political activity to members of the classified civil service; but no President has effectively forbidden members of the unclassified service — that is, all the higher officials in the service, to be active in nominating conventions and political campaigns. So long as the American people see thousands of officeholders exerting them-

selves to the utmost to keep their party, their immediate administrative superiors, and themselves in power, so long will they distrust a permanent civil service with tenure during efficiency and good behavior. All intelligent persons can see that a permanent civil service, which can afford a satisfactory life-career to its members, must be ready to serve whatever chief officers of the government may be put in power by popular election, and must therefore be prohibited from engaging in party political activities — just as appointed judges and officers of the army and navy are now prohibited from participation in political conflicts by custom and by their own self-respect and desire for independence.

Obnoxious political activity is not the only abuse which would be done away with, if the civil service were classified all the way up to the executive offices which have to do with determining the policies of the government. In the present unclassified service there is a great deal of absenteeism. Many men appointed for political reasons, without any test of their capacity or fidelity, are not only frequently absent from duty, but are in the habit of hiring assistants or clerks at low wages to do all, or nearly all, the work of their office, taking to themselves the greater part of the compensation provided for their offices, but doing none, or very little, of the work. Under a merit system of appointment and promotion, these evils would not occur.

Again, if every department of government were organized on the merit system as a business office, another obvious bad tendency in democracies would be checked, namely, the tendency to create sinecures, or offices with pay but no function. In this respect democracies tend to outdo aristocracies; but the sinecures created by democracies are usually in the lower grades of government employment, rather than in the higher. A merit system of appointment and promotion honestly applied would soon do away with the thousands of sinecures which now exist in the national, state and municipal governments of the United States.

5. LEGAL REPRESSION OF POLITICAL CORRUPTION [1]

The repression of political corruption is a task difficult not only because opportunities for its practice are numerous but because all those directly affected feel it to their interest to conceal its existence. Where political feeling runs high too, a jury trial will seldom result in a conviction which will command general respect, and even the courts have not always shown the degree of nonpartisanship present in other classes of suits.

Not merely dishonesty, therefore, not merely crime, but dishonesty and crime systemized, reduced to a science, practiced not as an occasional offense, but as a daily occupation by men in office and others out of office who have banded together to enrich themselves by debauching their government and corrupting its servants; — this is the central, striking, characteristic feature of political corruption. It is not a case of a bribe given or taken today and another next week, with no connection between the two offenses; it is bribery organized into a profession and followed as a steady means of livelihood. Everywhere, whether in Harrisburg or San Francisco, in St. Louis or Milwaukee, the procedure is the same. Only the size of the bribe fund varies. The methods employed are everywhere alike. Upon the inside a ring of public officials who compose a majority of the common council, county board or State legislature, as the case may be, and upon the outside a band of corrupt capitalists and business men, and dominant over all a political boss assisted by flying squads of trained and experienced lobbyists drilled in the business of collecting corruption funds from the bribe-givers and distributing them among the bribe-takers who compose the ring.

As no single cause has called this institution into existence, so no remedy alone will completely eradicate it. Education, moral suasion, enlightened political action directed against it — all these and others are effective cures within certain limitations.

[1] McGovern, F. E., *Proceedings of the American Political Science Association.* 1907; pp. 266–276.

But without legal repression to break the ground and pave the way for them these remedies have nowhere proved successful. General denunciation of graft is safe, but ordinarily quite ineffectual. Specific denunciation of political corruption is never safe unless it be either accompanied or preceded by successful prosecution of the individual denounced. Besides, scolding never pays, never reforms; while even to the dullest mind prison stripes inculcate the appropriate moral lesson.

In the work of putting corruptionists behind prison bars the first and most indispensable requirement is an honest grand jury. Without the assistance of such an agency political corruption has nowhere been successfully exposed. . .

Not only is the grand jury charged with the special duty of accusing those who have directly wronged the public, but it also has at its disposal the means for properly accomplishing this work. Without stating its reasons or outlining its purposes, it may compel the attendance of witnesses and the production of books and documents. It meets in secret and usually enjoins secrecy also upon all who appear to testify before it. Thus its action cannot easily be anticipated, influenced, forestalled or frustrated, as proceedings before an examining magistrate may be; for secrecy of procedure is the one essential prerequisite to the obtaining of legal evidence of this species of crime.

Second only in importance to the employment of grand juries as a legal agency for the repression of political corruption is the assistance furnished by immunity laws. Such statutes have been devised as substitutes for the constitutional privilege against compulsory self-incrimination, and while fulfilling this legal requirement also compel the disclosure of evidence of crime which otherwise would go unpunished.

Bribery, which is by far the most frequent offense involving political corruption, is essentially a crime of darkness. As a rule but two persons have knowledge of it, the bribe-giver and the bribe-taker. Of disinterested spectators there are none. Instead, the parties to a bribery transaction contrive to meet in

secret, there arrange the details of their compact in private and leave behind no record or memorandum of it. Each is equally guilty, and each has the strongest motive, therefore, for concealing the crime. In the absence of an immunity statute, for either to disclose the transaction may result in his own prosecution; for in such case his admission of guilt can be used against him, while as to his partner in crime it would be mere hearsay, not evidence. Under these circumstances the punishment of this and kindred offenses has often been placed practically beyond the power of the law.

To meet this situation and to enable those charged with the enforcement of penal statutes to cope with crime of the sort here under consideration, immunity laws have been enacted. If it be said that it is unjust that bribe-givers should be permitted to go free while bribe-takers are sent to prison, or *vice versa*, the answer is, that it is better that one of two guilty persons should be given immunity than that both should escape prosecution, and a crime which strikes at the very foundation of free institutions should go entirely unwhipped of justice. . .

Provided with an honest grand jury and armed with an immunity law, any community can, if it will, root out and expose political corruption so far as legal agencies are capable of uncovering and arraigning at the bar of justice crime of any sort. But the conviction and punishment of those arraigned is a far more difficult task.

This is so from the very nature of the case. In bribery, for example, the testimony of the accomplice or partner in crime, when clear and convincing, is always sufficient for indictment, but may prove inadequate at the trial. The defendant, whether guilty or innocent, can, if he will, oppose his oath to that of his accuser as to every material circumstance in the case and summon to his assistance from among his friends the full complement of witnesses who will swear to his former good character and unspotted reputation. It is true that sometimes there may be additional corroborative facts upon the side of the prosecu-

tion; but ordinarily the case will go to the jury upon the oath of the State's principal witness, in opposition to that of the accused. The situation of this witness, moreover, is not above criticism, nor can his credibility be placed beyond question. Of necessity he is a self-confessed criminal, whom, if his testimony be true, the immunity law alone keeps outside of prison bars. Then, too, there are always the presumption as to the defendant's innocence and the burden of proof resting upon the State to establish his guilt beyond a reasonable doubt. Under these circumstances is it strange that in many cases where good people are well satisfied there was guilt there should be acquittals at the close of jury trials?

In such cases, however, the mere fact of prosecution is not without significance. Though ultimately unsuccessful a public trial may have accomplished all or nearly all that a conviction could. Here the facts are laid bare beneath the eye of the whole community, and public opinion draws its inferences from such facts quite independently of the verdict of the twelve men who happened to sit as jurors in the case. And, after all, the breaking up of a vicious system and the elevation of the standard of official honesty, not the punishment of any man or set of men, are the important things.

In like manner great good may be accomplished and a real victory for honest government won, wherever official misconduct is even fairly, impartially and fearlessly charged with crime. In a country such as ours, public opinion is unquestionably a mighty force. Anything which goes to mold it by arousing public attention and directing public thought to specific wrongs which threaten the State, is of the highest significance and value. The average person, moreover, who commits bribery, or any of the crimes which involve political corruption, suffers quite as much punishment as a conviction can impose before his case is even called for trial. Exposure and disgrace, the deserved estrangement of old time friends, the inevitable and almost unconscious suspicion of even his nearest kindred, his own remorse,

heightened and intensified a hundred fold because of an awakened public conscience — these are the things, more than prison stripes, which strike deepest into the heart and most mortally wound the pride of the average man who has risen in business or official station sufficiently high to have an opportunity or a motive for the commission of this species of crime.

I speak now, of course, only of those who, though guilty in fact, cannot be or have not been convicted. That there are many such no well informed person can doubt. Manifestly the great danger here, however, is that innocent men may be unjustly accused under circumstances which make it very difficult, if not impossible, for them completely to vindicate themselves. In such cases great and even irreparable harm may be done. The only safeguard against this possibility is the exercise of caution and sound judgement, equal care at all times for the rights of the accused and the State, and the prosecution of no one for a merely technical offense in which there is not also moral turpitude.

In the work of prosecuting these quasi-political offenders serious obstacles, of course, are encountered at every turn. From the beginning to the end, not only of each case, but of each campaign against official dishonesty, they line the road at almost every point.

First in order of treatment, though possibly not of importance, is incompetence, timidity and disloyalty on the part of prosecuting officers. An illustration of what I mean was recently furnished in this State in a case where a district attorney was removed from office by the governor because of his refusal to prosecute indictments for bribery which had been returned by the grand jury of his county. Fortunately instances of this kind are rare. But when they occur the gravity of the situation needs no comment. If the man who must bear the chief burden of this work is not equipped or lacks relish for his task, little indeed can be expected in the way of accomplishment.

Next and more important among these obstacles are weak

and perverse juries, both grand and petit. Some trial juries seem to be immune to evidence of crimes involving official dishonesty and refuse to convict no matter how overwhelming the proof of guilt may be. Not to be outdone, grand juries have likewise refused to indict, although abundant evidence to warrant such action was submitted to them. It is matter of current history that the law relating to the manner of selecting grand jurors in this State was recently changed because it was found, at least in some localities, that grand jurors selected in the old way by aldermen and supervisors would not do their duty. . .

The witnesses called by the prosecution in actions involving political corruption often sympathize more with the defense than with the State and their disposition whenever possible to suppress evidence, distort facts and suggest defensive matter is another obstacle to the successful prosecution of this class of cases. At the trial it is not unusual indeed to find the State's principal witness in league with the accused and willing to tell the truth only so far as he may be compelled to do so under fear of prosecution for perjury.

Erroneous rulings prejudicial to the State made by trial judges upon matters of law constitute another serious impediment to the successful prosecution of these offenses. In this class of cases legal technicalities invariably assume formidable proportions. The plain, ordinary, unofficial crook who steals in the old-fashioned way when no one is looking, and not by securing the passage of a resolution through the county board or common council or a bill through the State legislature, when charged with crime usually comes into court, pleads not guilty to the information, and goes to trial upon the merits in the court where he is arraigned.

Not so with the suspected grafter. He usually begins battle with the State by filing an affidavit of prejudice against the presiding judge. This, of necessity, will compel a change of venue to another court, and will occasion delay, sometimes a delay of many months. When the case is finally called for trial in the

court to which it has been sent his usual practice is to file a plea in abatement, in which the existence and regularity of almost anything under the sun, no matter how remotely connected with the indictment, may be challenged. If this plea be ruled against him, he will demur. If the demurrer be over-ruled, he will next interpose a motion to quash the indictment. If this be denied, he will then file a special plea in bar. If beaten upon this issue also, he will reluctantly plead to the merits, and if convicted will promptly obtain a stay of execution for the purpose of enabling him to appeal the case to the supreme court. Thus the trial upon the merits may be the smallest part, and often is the least interesting proceeding connected with the whole case.

Needless to say, the attorneys who represent defendants in these cases are among the leaders at the bar. No money, no effort, no ingenuity will be spared to save the least of these distinguished gentlemen from merited punishment; for, no matter how poor or humble or insignificant the individual grafter may be, back of him stands the whole body of corruptionists, the political boss and the special business interests he represents, all of whom have waxed fat by means of the grafter's knavery.

Every one of these dilatory pleas involves delay, and delay usually weakens the State's case. Undoubtedly it is often with this object in view that resort is had to them.

Upon any one of these questions the trial judge, if he be weak or partial to the accused, may make a ruling which will then and there end the prosecution forever. For, as a rule, the State has no right of appeal in criminal cases. If it had this right, as it should, weak and vacillating judges would no longer resolve every doubt against the State, in order thereby to avoid reversals in the supreme court and so keep their records clear. . .

Moreover, even supreme court judges sometimes become extremely partisan. It is interesting now to turn back to the opinions written in bribery cases when the present crusade against political corruption was only just begun. Passing by the Tweed case in New York and the Butler case in St. Louis —

monuments both to the bad law which such partisanship may promulgate in order to protect a political favorite or save from prison a party boss — let a single instance suffice. In the Meysenburg case (71 S.W., 229) decided five years ago by the supreme court of Missouri the majority opinion savagely attacked Mr. Folk. Almost everything he did in the conduct of that case in the court below was reviewed and criticised, and the opinion then concluded with the following stump speech:

This record abounds at every turn with errors committed, but none of them, however, in favor of defendant. It would fill a volume properly to note and comment upon them. It will not be attempted. Those already mentioned must be taken as indices of the rest. But I will say this for the record at bar — that it occupies the bad preeminence of holding a larger number of errors than any other record in a criminal case I ever before examined, and that, if this record exhibits a sample of a fair trial, then let justice hereafter be symbolized by something other than the blind goddess with sword and scales.

Decisions such as these by courts of last resort, based now upon partisan bias and again upon technicality and legal hair-splitting to the utter disregard of the claims of justice and the suggestions of common sense, are specially vicious in their far-reaching effect upon trial judges. Intimidated by them, cautious men upon trial benches too often become dwarfed in function and paralyzed in judgment until they are mere "umpires at the game of litigation."

Another obstacle to reform along the lines here proposed is hostile public sentiment. All men are opposed to dishonesty in the abstract and are willing to applaud an assault upon it undertaken in another city, county or State. But it makes a world of difference whose ox is gored. . . Reform of ourselves or of our city is seldom either pleasant or popular. Besides, to assail political corruption, no matter where, is to throw down the gauntlet to the most powerful political and financial influences. It is only natural that these forces should resist the assault with all the power at their command and should even assume the

offensive and in turn make war upon the agencies of the law engaged in the task of enforcing its penalties against them. Thus, venal newspapers will be enlisted in the contest and an undercurrent of hostile sentiment will be started, which, sooner or later, will manifest itself in mis-trials, perverse verdicts, adverse rulings by trial judges and indefensible decisions by courts of last resort.

Notwithstanding all these difficulties, however, political corruption may be repressed by legal means. Recent history proves this. To doubt that in the future this history will be repeated is to doubt the permanency of free institutions and the capacity of a free people for self-government.

6. VIOLENCE AT ELECTIONS [1]

Cases of intimidation and violence in elections though decreasing in number are still, especially in the crowded districts of our large cities, the accompaniment of every closely fought election.

Thug methods were resorted to at the polling place of the 11th division of the Tenth Ward, 111 North Broad street, yesterday. As a result J. S. Ridenour and William Acker were beaten into unconsciousness and then taken to the Eleventh and Winter streets station. Two other William Penn watchers — J. B. and George Kelly — were also beaten and arrested. . .

. . . The assault, it is charged, was prearranged. There can be no doubt about that, it is declared, for each victim had received warnings that in case of his seeking to interfere with the workings of the Organization he would be hurt. The thugs made good their threat. After being released after 5 o'clock, Mr. Ridenour told the following story:

"At 7 o'clock all the Penn party watchers were in front of the polls, but were refused admittance. The doors were not opened to the voters until 13 minutes after 7. A mob had collected. . .

[1] *Public Ledger.* (Philadelphia) November 3, 1909.

"Charles McConnell, the Organization division leader, shoved us into the line and ordered us to wait until about a dozen strangers voted. As soon as we had voted we demanded to see the inside of the ballot box. McConnell ordered the lid taken off and then grabbed me and thrust me toward the can. I did not see the bottom of the can, however, for he jerked me away as suddenly as he had thrust me forward.

"A man giving his name as Andrew Rodgers appeared next and we challenged his right to vote. Our objections were sustained, but the most remarkable scene ensued. Another man, Charles Hall, desired to vote, and we also challenged him. Rodgers, against whom our objections were sustained, was then permitted to vouch for Hall, and the word of Rodgers was taken as sufficient reason why Hall's vote should be accepted."

Watchers Beaten Unconscious

"We challenged several others and were told to keep quiet. Finally one Thomas Campbell, who was registered from the rear of 1310 Cherry street, where there is no house, by the way, asked to vote. George Kelly challenged him. Campbell then cursed Kelly and ran toward him. Before Kelly was aware of Campbell's intentions he was struck in the face and Kelly fell back against the wall. With an oath, Campbell kicked at Kelly and was about to strike him again. I seized Campbell's arm and appealed to John McCluskey, the judge of the election, for aid. McCluskey and the entire board left their places and the room filled with men as if by magic. Then I was struck with a blackjack. The blow came from the rear and I fell. I remember nothing more until I found myself huddled in a corner with Acker stretched across the doorway. I attempted to rise, but was kicked. After several attempts to gain my feet I grasped the leg of the table and pulled myself to my knees. I was then thrown across the still unconscious Acker and thrust outside."

Injured Men Arrested

Then ensued one of the most remarkable bits of police politics that has ever been seen here. Kelly, a policeman of the Eleventh and Winter streets station, pulled Ridenour and Acker to their feet and, in pursuance of the demands of the Organization workers, announced that they were under arrest. Ridenour

fainted from loss of blood. A well directed blow had ripped his scalp behind the ear and the bridge of his nose was crushed. In all justice to the policeman it must be said, so the victims have heard, that he was evidently acting under instructions. He helped the two men to their feet and half dragged them to the Hahnemann Hospital. There four stitches were put in Ridenour's scalp and his nose was set and bandaged. Acker's injuries were not so painful. Only three stitches were required to close his wound.

Ridenour and Acker asked the policemen to be allowed to telephone to their employers. They were refused this privilege and thrust into a patrol wagon. At the station house they were told that Director Clay had issued orders that no messages should be sent out from the station.

Ridenour's friends made an immediate attempt to find him. At the Eleventh and Winter streets station a reporter . . . was dismissed with a snarling denial that either Ridenour or Acker was there. At the City Hall all inquiries were met with a profession of ignorance.

Another attempt to make the police of the Eleventh and Winter streets station tell where their prisoners were met with a curt refusal and a denial that the arrested watchers were within the cell room. Shortly after 4 o'clock Acker was released, and, of course, the whereabouts of Ridenour and the Kellys was then made known.

Confronted with this information, the police admitted that Ridenour was in the house, but refused to allow any one to see him. Commissioner Frank Gorman, secretary of the William Penn party's City Committee, was appealed to on behalf of Ridenour, and was told by the police that the beaten watcher had been released with Acker. This, however, was untrue, for Ridenour was not released until 5 o'clock. At the police station those in charge told the reporters that the affair was not of their doing, but that they had acted under strict orders from the City Hall.

Mr. Gorman declared that almost all attempts of his to secure the signature of a Magistrate to a copy of the charge against the various incarcerated men had been fruitless, and that where he had got the signatures they were not honored by the police.

Other Watchers Locked Up

In the station house with Ridenour, Acker and the Kellys were four other William Penn watchers from various divisions of the 10th ward. One of these was William Smith, a former policeman of the station in which he was a prisoner, and a William Penn watcher from the third division of the 10th Ward.

Smith said that policemen escorted voters in carriages to his division, and his arrest was the result of his protests. An attempt was made to assault him, Smith declared, and, as a result, the voting room was wrecked. The booths were partly wrenched apart to be used as clubs. Smith said he was dragged to the station house by several of his former associates. . .

. . . Activity of policemen and other office-holders at many of the 1174 election divisions in the city was evident from the opening of the polls until their closing at 7 o'clock, and according to charges made at the Penn party headquarters, no attempt was made by the police in many instances to interfere with attacks on Penn party workers by ruffians. . .

7. DEFEATING THE AUSTRALIAN BALLOT BY THE "ASSISTED" VOTE [1]

Laws intended to help the illiterate or crippled voter to take his part in the elections often form in the hands of corrupt party managers only a blind by which the secrecy of the ballot of those willing to sell their votes may be destroyed.

I shall now describe . . . the working of Mr. Addicks' political 'machine,' and the methods by which he buys votes. . .

[1] Kennan, G., *Outlook*. February 22, 1903; p. 432 *et seq.*

The most valuable and useful cog in Mr. Addicks' machine is, unquestionably, the voter's assistant. When the State of Delaware adopted the Australian ballot system, it was thought necessary to provide the illiterate voter — and especially the negro — with expert assistance in the marking of his ballot. The Governor was therefore empowered and directed to appoint, for every polling-place, two voter's assistants — one from each of the two dominant parties — whose duty it should be to read or explain the ballot to the voter and assist him in marking it. It was not long before these voter's assistants became — as Mr. Willard Saulsbury said in his letter to Governor Hunn — mere 'tally clerks to see that purchased voters delivered the goods.' As the Union Republican party, in recent elections, has been one of the two principal parties, it has had its own voter's assistants, and has used them to keep watch and tally of its purchased vote. If Mr. Addicks had not been able, by means of these officers, to check up his expenditures and make sure that he received the votes for which he had paid, he would not now have twenty-one Senators and Representatives voting for him in the Legislature of the State. Voters might have taken his money just as freely, but many of them would not have 'delivered the goods.'

In practice, the voter's assistant part of Mr. Addicks' machine consists of a secret booth, a corrupt voter's assistant, a cashier's office, and a cashier. The workers make 'deals' with purchasable voters before election day, and then furnish the cashiers with lists of men bought and amounts of money promised. When the purchased voter goes to the polls, the corrupt voter's assistant sees that his ballot is properly marked and deposited, and then gives him something in the nature of a token, as a proof that the goods have been delivered. The voter thereupon goes to the cashier's office, surrenders the token, and receives the amount of money set opposite his name on the worker's list, which has previously been turned over to the cashier for the latter's guidance.

At one polling-place in the Baltimore hundred, in the early

days, the token given to the purchased voter was a chestnut, which the assistant put into the voter's pocket. It soon became noised about among the colored men of the village that ordinary chestnuts at the cashier's office were bringing $10 apiece. Two or three negroes provided themselves with chestnuts from private sources of supply, and went boldly into the cashier's office to get money for which they had rendered no service. To their great surprise and disappointment, they were promptly hustled out, minus chestnuts and without any money. All chestnuts looked alike to them, and they could not understand what was wrong with their chestnuts, until they learned a few days later that all the chestnuts of the voter's assistant had been carefully and thoroughly boiled, for easy identification and as a precaution against this very trick.

The Addicks managers now provide their voter's assistants with tokens that have been bought outside of the State and that cannot be easily duplicated or counterfeited. In Dagsboro, in last fall's election, they used a red celluloid button of a peculiar form which could not be obtained in Delaware. In the Baltimore hundred they had tin tags stamped 'O.K.' Tin tags were also used in Milford, Kent County. In other representative districts purchased voters were given a certain number of links of a small, fine chain, or peculiar large-headed black pins, which they stuck in their coats when they went to the cashier's office for settlement.

The system was ingenious and worked well; but in some parts of the State, where the voter's assistants could be fully relied upon, money was given directly to them, and they paid for votes in their booths. This was safer than making settlements outside and involved less trouble. . .

When Mr. Addicks' agents first began to buy votes in southern Delaware, they could 'get' only a part of the negroes, and a few men from the poorest class of whites; but the corrupting influence of money, used boldly and with impunity throughout a long series of years, finally had its effect upon men of a higher type —

men who could not plead poverty as an excuse for their acts. Well-to-do farmers in Sussex County, who own their farms and have money in bank, now sell their votes regularly every other year; and as for the colored population, which polls in the two lower counties a vote of about five thousand, it has been corrupted *en masse*. Many informants in Kent and Sussex told me that in the circle of their personal acquaintance they did not know a single negro who 'voted his sentiments.' Every man of them sold his vote for what it would bring.

8. REPEATING [1]

In large cities it is impossible for the election officials to know all the voters. This makes it possible for corrupt party workers to get the names of men not qualified to vote on the registry books not only in one but in various precincts. Such votes once cast are as valid as any. The effect on the result of course is the same as if the ballot box had been stuffed by the election officials.

For thirty-two years preceding the election of 1908, the number of persons registering in the boroughs of Manhattan and the Bronx increased every four years on an average 29,714. In 1908, on the other hand, the registered vote in the same territory decreased 19,952, which, if added to the normal increase during the preceding thirty-two years, represented a total falling off of 49,666 in the boroughs of Manhattan and the Bronx alone. It is also more worthy of note that far greater efforts were made to check this vote in this same territory than in the rest of the city. Despite this falling off of the registration in the elections of 1908, yet in this very same election a leader of an assembly district has stated that in his district alone he found 900 fraudulent registrations, and even then he believed that there were many that he had not discovered. This leader, moreover, is known as one

[1] Finch, E. R., "The Fight for a Clean Ballot." *Independent*. May 12, 1910.

who is over-diligent in seeking to prevent these frauds. A careful investigation in widely different parts of the city following the election of 1908 showed that, even with all the fraudulent votes that had been eliminated, yet in many districts this vote ran from one-eighth to one-quarter of the total registered vote. The above statements are not those made by a writer solely for the sake of exciting attention, but are capable of demonstration and actual proof.

It has been publicly stated that following the election had last November, those in a position to know have admitted that, owing to the precautions which were taken to prevent these frauds, 20,000 "tin soldiers," as they call the repeaters, had been prevented from registering and voting. This is the admitted statement of those who produce this vote. A conservative estimate places the number of fraudulent registrations and votes prevented as upward of 30,000. When it is noticed that a Sheriff, District Attorney, a President of the Borough of Manhattan and three Supreme Court Judges were elected by considerably less than 30,000, thoughtful men pause and wonder how often in the past has the true verdict of the people been overridden.

New York City, because of its size and because the election officers do not expect to know their neighbors, furnishes the Mecca for those who make it their business to produce this vote. For many years now in this city personal registration has been required. Those who wish to vote must present themselves at the polling-place on one of four specified days within thirty days preceding election day, and there personally state to the board of inspectors their qualifications. This is done by answering and signing the following questions: Name and address, age, number of floor residing on, person residing with, whether native born or a naturalized citizen, and if naturalized, in what court, length of time residing in the State, in the county and in the election district, from where last registered and voted.

For the purpose of affording convenient access to the polling-

places, the city is divided into election districts upon a basis of having 500 registered voters in each district. When the person applying to register presents himself this information is taken down by four separate inspectors, each of whom makes a separate record of the answers of the voter. Two of these inspectors represent the party casting the highest number of votes for Governor in the last preceding election, and two of them represent the party casting the next highest number of votes cast for Governor, and thus they represent at the present time the Republican party and the Democratic party respectively.

On election day the voter presents himself again at the same polling-place and gives his name and address and signs his name and deposits the ballot that is given him in the ballot box. Now, if the board of inspectors knew their neighbors, as would be the case if the community was a small one, then fraudulent registration would be almost an impossibility. The board of inspectors would expect to know those applying to register, or at least to know their identity. The risk a repeater would run would be too great. In the City of New York none of the inspectors composing the board expect to know the person applying to register. It is an exception if they do know him. Probably out of 500 people that apply for registration, they may know fifty of them.

This is the great fact upon which the producer of the fraudulent vote relies. In each election district one person, aided by assistants, is responsible for the false registrations to be produced in that district. The object is to put on the rolls as many false registrations as possible. Of course, in many districts of the city it is impossible to produce much of this vote, but in other districts the conditions are such that the deficiency can be made up.

Now, let us see how easy it is to do this. A man comes in to the registration board and gives his name as Thomas Robinson, his address as a large boarding house or says he lives with Mrs. X., on the sixth floor of a ten-story apartment house having

four families on a floor; that he has been living there for two weeks; is thirty-two years of age; has been in the State three years and in the county six months; is a native-born citizen and has not registered and voted before in this State, and signs his name.

The board of inspectors do not know that these facts about him are not true and there is no one else to challenge him. The producer of this vote has seen Mrs. X. long before. . . If, as very rarely happens, inquiry is made between registration and election days, Mrs. X. is prepared to say that Thomas Robinson is not at home, but that he lives there.

Thomas Robinson, after registering in this polling place, has walked up the street and had himself introduced to the producer of the fraudulent vote in the next election district and has had furnished him another Mrs. X., and here he has registered under the name of William Jones and given the second Mrs. X.'s address. Very often, and despite all the vigilance used during the last election, it has even happened that Thomas Robinson has gone before the same board of registration officers and given another name and another address in the same election district, and put another name on the same roll. A person who is genuinely interested in preventing these frauds can see them perpetuated by visiting any one of a number of different registration places.

Now, on election day, a repeater often other than the repeater who placed the name on the roll, comes to each of these polling places, gives the name and the address that was registered, signs his name, takes the ballot, marks it and deposits it. When once in the box it is just as valid as the ballot deposited by any honest American who has waited for one-third of his life before he was entitled to deposit his ballot in the ballot box. . .

Let us see how the producer distributed the false registrations in the block composing his district.

His wife and he occupied the first floor above the basement of a three-story house made over to accommodate a family on

each floor. Eight names were to be registered as living with them, and his wife knew her rôle. He had been able to provide some odd jobs for the man who rented the floor above, and in return this man and his wife were to stand cover for seven. The woman who rented the top floor was to pretend that five lived with her, in consideration of the payment of her rent for a month. The barber in the basement, favoring a steady customer, was willing to put a screen in the rear to cover a double cot and make pretense for two more. He had gone to every one who had taken names the year before and had urged the necessity of the greatest possible increase. In addition, he had canvassed the janitor and the lessee of every apartment house and the proprietor of every house with rooms to let. Wherever there was a vacant apartment he had endeavored, and in most cases with success, to persuade the janitor to say it was occupied by the persons whose names he furnished. The persons living in his district whom he knew he approached directly, and others he approached thru mutual friends. Those who were willing he paid either with a cash consideration or a future reward.

A doctor, who was hoping to be appointed as a Coroner's physician, occupied a house with his father and brother, and was willing to take four additional names. The inmates of a disorderly house had been sent away and twenty-seven cots had been sent in, and the house had a sign as renting rooms to men only. A stable in the block had furnished cover for eleven more. If any questions were asked of these men, their only answer was to be that they worked and slept in the stable. He himself was employed in a city department, and consequently only put in an appearance for a few minutes, once in the morning and once in the afternoon. Every one in the department understood that it was the month before election. He had kept in mind all the year around the real work that he was assigned to do. Whenever any favor was done for any householder or lessee, there was always the idea that this person might be obtained as a cover for additional false votes.

His efforts had almost brought the number up to 150, and he was counting on taking the chances of having a few register from residences whose owners would not be likely to scan the registration list, or if they did, would be too fearful of notoriety and inconvenience to make any complaint. Following the usual custom, he had arranged for the use of a vacant basement next door to the polling place. Here he had a helper in charge who had a list of the places from which the names were to be registered. Thruout the four days of registration he would be visited from time to time by a man whom he would know and who would introduce to him two or three men at a time, and these men would be sent into the basement, and there given the name and address and information under which they were to go up and register in the polling-place. As soon as they had registered they would come back to the basement and would be furnished with a slip upon which they would write the name and address under which they had just registered, and the name of the person with whom they had stated they lived. On the same slip they would also sign the name just the same as they signed it in the polling place. Having made this slip out and turned it in, they would receive $1 apiece for registering, and go off with their leader to another polling place to meet the man who was there in charge of the same work.

The object of having the information put on a slip and the name signed as the repeater had signed it on the registration book was to have this slip ready to turn over to the man who would vote under this name on election day.

The man who acted as introducer is known as the "guerrilla" leader. On election day the same "guerrilla" leader and other "guerrilla" leaders would bring around the same or other men, only more men would be brought at one time and they would be brought faster, because, while there are four days to register the names, yet all the names registered must be voted on election day. It is the custom to get a start early in the morning, and so, after the polls have been open for a few minutes, there is

usually a line of from seventy-five to one hundred men waiting to vote. In addition to the men brought by the "guerrilla" leaders, the producer of the vote in the particular election district usually knows a few local men whom he can utilize. Last year, it was said, two men, partners in business, who had received contracts under the city government, and who had an acquaintance with the producers of this vote in certain sections of the city, were informed that they would have to act as "guerrilla" leaders. They demurred, but were told that if they expected any favors to come, they would have to so act.

When considered in the abstract, it looks as if the fraud is bold, but when the concrete case is presented, as shown above, it is seen that the chance of detection is not formidable. The "guerrilla" leaders prefer to have men from out of the State, because at the close of the day these men can leave the State and their identity is lost.

The devices used to give color for false residences are innumerable. Old names are sought to be kept on the rolls, because it follows that the older they are, the more certain the investigator feels that they must be legitimate. Similarly, the names of dead men are oftentimes kept on the rolls. In the election of 1908 a name was registered which was that of a son whose mother said that he had died in 1904. This illustrates the humor in the remark of a Philadelphian "that they were still voting in that city the names of the signers of the Declaration of Independence."

The names of those who have moved between one election and another furnishes a fruitful source. From 30 per cent. to 45 per cent. of the voters in an election district move between each election. The remaining 70 per cent. to 55 per cent. represent the permanent roll. These men should be checked up during the period immediately following one election and in preparation for the next. But it has often been customary to make little, if any, investigation prior to the next registration, which must all take place in the thirty days immediately preceding. Then an

effort is made to check up the total registration in the city of New York, which numbers upward of 650,000 voters. It is impossible in this short time to make any adequate investigation, and consequently, the few cases that are investigated are often done in a haphazard fashion, and such investigation must of necessity only concern a small portion of the names fraudulently registered. . .

As greater efforts have been made for a clean ballot, so greater counter-efforts and more ingenious devices have been used on the part of those producing this fraudulent vote. In the last election transfers of fraudulent names were had between different election districts and between different assembly districts, so as to baffle the investigator in verifying registration. Again, squads of men have been hired in adjacent cities and brought to the city of New York for the purpose of having them sleep a few nights in one district and a few nights in another district and so on, and have them register in each of such districts. One man from out of town showed four different keys of the four places where he was to sleep a few nights. Again, names were put on the rolls of foreigners actually living in the district. When inquiry was made at the houses it was ascertained that persons corresponding to the names registered were living in these houses, and thus the investigator felt satisfied, not thinking to ask whether these persons were naturalized. Another plan was to have unnaturalized aliens simply register on the statement that they were native born; when asked where, they gave some other state in the union. Statistics have been so loosely kept that it is impossible to disprove this statement, even if time were available between registration and election. After election, the matter is dropped. A thoughtful person who learns for the first time that all a foreign-born citizen who desires to vote as a native born has to do is to make a statement on registration day that he is a native-born citizen, is amazed at the effectiveness of the answer. Those seeking to eradicate these frauds are never sure that they have discovered all. Experi-

ence has taught that often names which appear to represent genuine voters are nothing but a trick more clever than any before discovered.

In the event that an effort is made to arrest and convict persons falsely registering, no expense or plan is too great for the producers of these votes to undertake in an endeavor to prevent a conviction. It is the psychology of this dastardly business to guarantee protection to those who take the chances. Low bail in the first instance is always sought, and if the chances for conviction look good, the bail is forfeited. Another favorite method is to have the men escape by the inability of the inspectors to identify the man as the person who actually attempted to register. If a conviction is secured, a persistent, determined effort is made to obtain a pardon, particularly before the next election, so that the producers of the vote may point to the pardon as their guarantee of protection before asking that the same chances be taken in the next election. The number of pardons of the producers of this vote is astonishing, and the number of those who actually escape conviction on what seems to the citizen wholly technical defenses is more astonishing.

9. THE EFFECT OF VOTE BUYING ON THE VOTERS [1]

The effect of vote buying is not confined to the election returns and the dishonest party manager and his "friends." Citizens of unquestioned integrity too often feel that if money is being paid for voting it is a shame to let the rascals get it all. Many a voter sees no wrong in accepting a payment of "carfare" or one to cover "time lost in voting."

Before we can find remedies for the corruption of the ballot it will be necessary to look somewhat carefully into the causes of the corruption. It is not sufficient to say that the corruption is due to the party spirit of the time, or to our form of ballot,

[1] Jenks, J. W., "Money in Practical Politics." *Century*, Vol. 44, 1892; p. 947.

or to any other one or more of such external causes; the causes lie deeper than that. In the first place, so long as we have, practically, universal suffrage, we shall always find many voters who are ready to cast their votes not from principle, but for their own pecuniary interest, though this number is smaller than many think. A large part of the "commercials" are paid to vote as they would vote without bribery. Not till the millenium comes can we expect these most selfish voters to refuse to sell their votes, if the opportunity offers. We must in some way make it for the interests of the party managers not to attempt to buy. But, on the other hand, whenever an election is close, and "floaters" stand about, waiting for bids, the temptation is so great for party managers to buy, in order to secure the election of their candidates, that we need not expect the practice to stop, unless in some way, as said above, we can make the advantage to be gained from honesty greater than that to be gained from dishonesty. At the present time, under our present laws, the prize is so great and the risk so slight, that corruption is sure to be found in almost every close district.

At the present time, many a man who will not sell his vote to the opposite party will nevertheless ask pay for his time on election day. From this receipt of his expenses in bringing himself and his workmen to the polls, bribery is made easy. The man feels that he is not selling his vote; he was expecting to vote his party ticket at any rate. But after he has gone thus far a number of times he loses sight of the real purpose for which he is voting, and the ballot seems to be cast for the good, not of the country, but of the candidate. If the candidate is to be benefited, why should he not pay for the benefit? He can afford it. Not a few men, seeing money going freely into the pockets of "floaters," say to the managers: "If money is so plentiful, why should the scoundrels get it all? Let us honest partymen have our share. Our votes are worth just as much to the candidates."

In classes of university students, containing from ten to twenty

voters, more than once I have found several — from five to ten — who had received from campaign managers their expenses home from college to cast their votes. These students were by no means common "floaters"; their votes could not be directly purchased at all. But still, on first consideration, many of them defend the payment of expenses of voters by their own party, when they are unable to pay them themselves, not realizing that this is but a covert form of bribery, and that, after receiving expenses, one would not feel at liberty to vote independently. If people as intelligent and honest as are college students of voting age will thus thoughtlessly encourage corrupt methods of voting, what may we expect from the "floater"?

Another cause that has conduced to the corruption of voters is the lack of distinct issues between the parties. When party feeling is very strong, as in our country at the time of the Civil War, when most of the masses feel that upon the success of their party depends the existence of their country, votes will not be so readily sold; relatively speaking, only here and there will be found a man whose vote is purchasable. But when the issues between the parties are not sharply drawn, when a man feels that either party's success is of slight consequence, it is much easier to secure his vote by purchase without any consciousness on his part of corruption.

10. THE POWER OF THE UNITED STATES TO REGULATE ELECTIONS TO THE HOUSE OF REPRESENTATIVES [1]

Though the regulation of voting is primarily left to the states the Federal Government exercises an important degree of control through its ability to insure the purity of Congressional elections.

Mr. Justice Bradley delivered the opinion of the court.

The petitioners in this case were judges of election at different voting precincts in the city of Baltimore, at the election

[1] *Ex parte* Siebold, 100 U. S. 371, 1879 (excerpt).

held in that city and in the State of Maryland, on the fifth day of November, 1878, at which representatives to the Forty-sixth Congress were voted for.

At the November Term of the Circuit Court of the United States for the District of Maryland, an indictment against each of the petitioners was found in said court, for offences alleged to have been committed by them respectively at their respective precincts whilst being such judges of election; upon which indictments they were severally tried, convicted, and sentenced by said court to fine and imprisonment. They now apply to this court for a writ of habeas corpus to be relieved from imprisonment.

. . . . . .

These indictments were framed partly under sect. 5515 and partly under sect. 5522 of the Revised Statutes of the United States; and the principal questions raised by the application are, whether those sections, and certain sections of the title of the Revised Statutes relating to the elective franchise, which they are intended to enforce, are within the constitutional power of Congress to enact. . .

Congress has partially regulated the subject heretofore. In 1842, it passed a law for the election of representatives by separate districts; and, subsequently, other laws fixing the time of election, and directing that the elections shall be by ballot. No one will pretend, at least at the present day, that these laws were unconstitutional because they only partially covered the subject. . .

The State may make regulations on the subject; Congress may make regulations on the same subject, or may alter or add to those already made. The paramount character of those made by Congress has the effect to supersede those made by the State, so far as the two are inconsistent, and no farther. There is no such conflict between them as to prevent their forming a harmonious system perfectly capable of being administered and carried out as such. . .

As to the supposed incompatibility of independent sanctions and punishments imposed by the two governments, for the enforcement of the duties required of the officers of election, and for their protection in the performance of those duties, the same considerations apply. While the State will retain the power of enforcing such of its own regulations as are not superseded by those adopted by Congress, it cannot be disputed that if Congress has power to make regulations it must have the power to enforce them, not only by punishing the delinquency of officers appointed by the United States, but by restraining and punishing those who attempt to interfere with them in the performance of their duties; and if, as we have shown, Congress may revise existing regulations, and add to or alter the same as far as it deems expedient, there can be as little question that it may impose additional penalties for the prevention of frauds committed by the State officers in the elections, or for their violation of any duty relating thereto, whether arising from the common law or from any other law, State or National. Why not? Penalties for fraud and delinquency are part of the regulations belonging to the subject. If Congress, by its power to make or alter the regulations, has a general supervisory power over the whole subject, what is there to preclude it from imposing additional sanctions and penalties to prevent such fraud and delinquency?

It is objected that Congress has no power to enforce State laws or to punish State officers, and especially has no power to punish them for violating the laws of their own State. As a general proposition, this is undoubtedly true; but when, in the performance of their functions, State officers are called upon to fulfil duties which they owe to the United States as well as to the State, has the former no means of compelling such fulfilment? Yet that is the case here. It is the duty of the States to elect representatives to Congress. The due and fair election of these representatives is of vital importance to the United States. The government of the United States is no less concerned in the transaction than the State government is. It certainly is not bound

to stand by as a passive spectator, when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State. This necessarily follows from the mixed character of the transaction, — State and National. A violation of duty is an offense against the United States, for which the offender is justly amenable to that government. No official position can shelter him from this responsibility. In view of the fact that Congress has plenary and paramount jurisdiction over the whole subject, it seems almost absurd to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce; or that an officer who stuffs the ballot-box cannot be made amenable to the United States. If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has not been deemed sufficient to require it, and not because Congress had not the requisite power. . .

The counsel for the petitioners concede that Congress may, if it sees fit, assume the entire control and regulation of the election of representatives. This would necessarily involve the appointment of the places for holding the polls, the times of voting, and the officers for holding the election; it would require the regulation of the duties to be performed, the custody of the ballots, the mode of ascertaining the result, and every other matter relating to the subject. Is it possible that Congress could not, in that case, provide for keeping the peace at such elections, and for arresting and punishing those guilty of breaking it? If it could not, its power would be but a shadow and a name. But, if Congress can do this, where is the difference in principle in its making provision for securing the preservation of the peace, so as to give to every citizen his free right to vote without molestation or injury, when it assumes only to supervise the regulations made by

the State, and not to supersede them entirely? In our judgment, there is no difference; and, if the power exists in the one case it exists in the other.[1]

II. PUBLICITY OF CAMPAIGN CONTRIBUTIONS [2]

The last twenty years have seen the development of a campaign to force the letting in of light upon the methods and resources of our party organizations. The legislation secured for this purpose constantly increases in definiteness. Even partisanship if forced to fight in the open must confine itself, for its support to sources of income which the public conscience will approve.

New York led in the movement for publicity proper with a law passed in 1890 (ch. 94), requiring candidates to file statements for their expenditures. This act was very ineffective, no publicity being required for the expenses of election committees. Most of the laws subsequently passed have brought campaign committees as well as candidates specifically under regulation. By the end of 1908, more than twenty states altogether had taken some action looking toward the publicity of expenditures. The earlier laws of this character were very loosely drawn. In many cases they simply required "statements," and the results obtained were distinguished chiefly by gross inadequacy and heterogeneity. Later statutes and amendments, however, have fixed the form of reports, precisely, itemizing them in considerable detail. Wisconsin, for example, furnishes blanks especially prepared for this purpose. Vouchers for all sums exceeding five or ten dollars are required in a number of states. Publicity of receipts is not so commonly prescribed as publicity of expenditures. Reports of contributions were first required by Colorado and Michigan in 1891, followed by Massachusetts in 1892, Cali-

[1] See also *ex parte* Yarbrough, 110 U.S. 651, 1884.

[2] Brooks, R. C., *Corruption in American Politics and Life.* Dodd, Mead and Co., New York, 1910; pp. 229–237.

fornia in 1894, Arizona in 1895, and Ohio in 1896. Repeals of the laws first passed in Ohio and Michigan indicate that they were somewhat ahead of public sentiment at the time, although they would hardly be so regarded now. In this connection the New York law of 1906 (ch. 502), was an event of first class importance. It compels political committees to file detailed statements of receipts as well as expenditures, and provides for judicial investigation to enforce correct statements. The great weight of the name of the Empire State is thus placed squarely behind the demand for real publicity of receipts. Under this act, voluntarily accepted by the national chairmen in 1908, publicity was given to the finances of a presidential campaign for the first time in the history of the country.

In the national field the nearest approach to legislation prescribing publicity for campaign contributions was made by a bill (H.R., 20112) introduced into the House of Representatives in 1908.[1] Briefly this bill covered both expenditures and contributions of the national and the congressional campaign committees of all parties, and of "all committees, associations, or organizations which shall in two or more states influence the result or attempt to influence the result of an election at which Representatives in Congress are to be elected." Treasurers of such committees were required to file itemized detailed statements with the Clerk of the House of Representatives "not more than fifteen days and not less than ten days before an election", and also final reports within thirty days after such elections. These statements were to include the names and addresses of contributors of $100 or more, the total of contributions under $100, disbursements exceeding $10 in detail, and the total of disbursements of less amount. The bill also contained provisions, which will be referred to later, designed to cover the use of money by persons or associations other than those mentioned above. Unfortu-

[1] A step in advance has now been made in the act for publicity of campaign contributions passed by Congress in 1911. (Public, No. 32. Approved August 19, 1911.)

nately a provision was tacked on to the foregoing raising the question of the restriction of colored voting in the South and hinting at a reappointment of congressional representation under the Fourteenth Amendment to the Constitution. As a consequence an embittered opposition was made by the Democrats who charged that the latter provision was deliberately introduced in bad faith with the intention of making the passage of the bill impossible. In the house it was carried by a solid Republican vote of 161 in its favour to 126 Democratic votes in opposition, but was allowed to expire in the Senate Committee on Privileges and Elections for fear that it would become the object of a Democratic filibuster.

Whatever may be the merits of the proposal to readjust congressional representation it is clearly a question which is logically separable from that of campaign contributions. If this separation is effected there would seem to be reason to hope that a publicity bill similar in its main outlines to that of 1908 can pass Congress. While a platform plank of this sort was voted down in the Republican National Convention of that year, Mr. Taft in his speech of acceptance said:

> If I am elected President I shall urge upon Congress, with every hope of success, that a law be passed requiring a filing in a Federal office of a statement of the contributions received by committees and candidates in elections for members of Congress, and in such other elections as are constitutionally within the control of Congress.

The manœuvring for position between the parties in 1908 which resulted in the voluntary acceptance by each of high standards of publicity is too fresh in the public mind to require rehearsal here. For the first time in the history of presidential elections some definite information was made available regarding campaign finances. The Republican National Committee reported contributions of $1,035,368.27. This sum, however, does not include $620,150 collected in the several states by the finance committees of the Republican National Committee and turned

over by them to their respective state committees. The Democratic National Committee reported contributions amounting to $620,644.77. The list of contributors to the Republican National Fund contained 12,330 names. The Democratic National Committee filed a "list of over 250,000 names representing over 100,000 contributors who contributed through newspapers, clubs, solicitors, and other organizations, whose names are on file in the office of the chairman of the Democratic National Committee at Buffalo."

On many points, unfortunately, the two reports, while definite to a degree hitherto unknown, are not strictly comparable. Some species of "uniform accounting" applicable to this subject is manifestly necessary before any detailed investigation can be undertaken. One big fact stands out with sufficient clearness, however, namely that the national campaign of 1908 was waged at a money cost far below that of the three preceding campaigns.

Basing his estimate upon what is said to have been spent in 1896, 1900, and 1904, Mr. F. A. Ogg placed the total cost of a presidential election to both parties, including the state and local contests occurring at the same time, at $15,000,000. One-third to one-half of this enormous sum, in his opinion, must be attributed to the presidential campaign proper. Compared with this estimate of from five to seven and a half millions the relatively modest total of something more than two and a quarter millions shown by the figures of 1908 must be counted a strong argument in favour of publicity.

The most important single issue raised by the policies of the two parties during the last presidential campaign was that of publicity before or after election. Early in the campaign the Democratic National Committee decided to publish on or before October 15th all individual contributions in excess of $100; contributions received subsequent to that date to be published on the day of their receipt. Following the principle of the New York law both parties made post-election statements. It is

manifest that complete statements of expenditures, or for that matter of contributions as well, can be made only after election. Every thorough provision for publicity must, therefore, require post-election reports. Shall preliminary statements also be required? As against the latter it is urged that contributors whose motives are of the highest character will be deterred by the fear of savage partisan criticism. If publicity is delayed until after the election campaign bitterness will have subsided and a juster view of the whole situation will be possible. In favour of publicity before the election it is said that two main ends are aimed at by all legislation of this sort; — first to prevent the collection and expenditure of enormous sums for the bribery of voters and other corrupt purposes, and, second, by revealing the source of campaign funds to make it difficult or impossible for the victorious party to carry out corrupt bargains into which it may have entered in order to obtain large contributions. Publicity after the election will, indeed, serve the second of these ends, but publicity before would be much more effective in preventing corrupt collection and expenditure of funds. Moreover it might prevent the victory of the party pursuing such a policy and thus, by keeping it out of power, render it incapable of paying by governmental favour for its contributions.

12. THE CAMPAIGN WAR CHEST [1]

The extent to which the evil of unrestrained contributions may grow is illustrated by the experience of New York City. Both parties must be helped whenever the "interest" is one which can be damaged by hostile legislation or administrative action. Candidates are chosen with an eye to what they can contribute or they are forced to give far beyond what their private means would justify. The temptation to go where the largest amounts may be obtained makes the party depend for its financial support on a class, not on the people. Conversely the idea that the party coffers are full cuts down the willingness

[1] Carr, J. F., "Campaign Funds and Campaign Scandals." *Outlook*, Nov. 4, 1905.

of the citizens to do party work except for reasons other than principles.

License to grab from the 'dough-bag' has become an inalienable birthright for the smaller grafters. Every man who renders a service is a voter. He must always be paid more than his labor is worth, and his labor is often worth a great deal. A bill-poster who toils all night and all the day Sunday pasting his flash-bills on barrels and dead-walls is entitled to a high extra wage. But no ordinary excess rate is sufficient. An enthusiastic spirit of gratitude must be awakened in the man, if the fires of party patriotism are to blaze brightly. Extravagant expectations are universal, extravagent demands of hourly occurrence. Worse still, almost every kind of helper and worker, down to the smallest messenger-boy, acts as if the money in the party chest did not represent honest labor or honest saving of any kind, and as if it properly belonged to any one clever enough to lay hands on it. It is 'honest graft,' and human rapacity grows vulture-like. For our greatest city election, extravagance becomes such profligacy of expenditure that for each of the last three mayoralty campaigns in New York it is estimated that all parties spent more than $800,000; and yet Mr. Plunkitt, in the fullness of knowledge, declares, 'There's never been half enough money to go around.' . .

How are these lavishly spent funds actually raised in this year of grace 1905? And with what abuses? Every one knows that by far the heaviest contributors are pecuniarily interested individuals and corporations. Their assistance has gradually grown, and only gradually are its consequences seen. In the sixties political contests were chiefly supported by a multitude of small contributors. It was a simple and democratic way — a help and not a hindrance to popular representative government. To-day the small contributor has almost entirely escaped his duty, and our Assemblymen, Congressmen, and State and National Senators are so often the blind agents of 'bosses'

and corporations that many a time the alarmist seems to utter only sober sense when he cries excitedly that our representative institutions are in danger.

A new organization of political parties, with up-to-date business-like methods of plunder, became inevitable whenever in the States and cities they sold themselves for the money they needed to live the new, extravagant political life. Just as inevitable was the creation of the 'boss,' a man of undisputed and irresponsible power, unscrupulous and able in intriguing for patronage and collecting money. No two of our 'bosses' are alike either in manners, methods, or even in organizing power, but they all have the masterful gift of the highwayman. . . . As the necessity for secrecy makes the 'boss' inevitable, so it is the big unavowed contribution, buying or trying to buy an unfair privilege, that makes the all-round 'square deal' impossible.

Neither political sentiment, nor principles, nor even party bigotry really determines the majority of these large political gifts. Such contributions are usually considered as purely 'a business proposition.' The saloon-keeper thinks of his as a kind of extra-legal license to sell liquor at forbidden hours. The contractor who habitually infringes the building law pays his as a bribe of silence. The placeman, as a feudal tenant, reluctantly hands his out like ancient scutage, or shield money. For others the pay is blackmail, or a hold-up, or a ransom extorted by bandits, or a form of life or accident insurance. The immediate purpose of such gifts may be winning favor or avoiding trouble, but the ultimate object is making or saving money. An official of a small railroad interest that enters New York City once told me that his company made a practice of sending $5,000 to Tammany at the beginning of each campaign. 'We often have to ask favors,' he said, 'and it puts us on a friendly footing with influential people in the Hall. It is true that we have to pay separately for our privileges when we get them, but it saves us money in the end. Last year, when we needed to run some tracks across an out-of-the-way avenue' — and he

named the place — 'they made us give up $30,000, but it would have cost us double that if we hadn't had a backer in the Wigwam.'

Gifts are often made to both parties by the same donor, and contributing corporations calculate with some nicety the power of politicians to help or injure them. In a recent campaign there was a close contest in one of the New Jersey counties, and, certain that he could control the local election if he had aid, the Chairman of the Democratic County Committee appealed for large financial help to ex-Senator Smith, the 'boss' of the Jersey Democracy. The ex-Senator could not grant the full demand, and felt obliged to give some explanation of present Democratic poverty in New Jersey. He said that there was a time when the State was in the doubtful column and Democrats and Republicans had an almost equal chance of success, that the Pennsylvania Railroad Company treated the Democrats almost as handsomely as its Republican favorites, but that ever since Bryan's overwhelming defeat in 1896, as the Democrats had not the slightest chance of carrying the State, the Pennsylvania had not only cut off all its bounties to the Democratic fund, but, with all the privileges it needed and fearing no Democratic competition in legislative demands, it had greatly reduced the amount which it formerly gave the Republicans. Could 'a business proposition' be more clearly stated? The two parties have several hundred important treasuries, National, State, and municipal. Into them these gifts are cast more or less stealthily, and no one can estimate their huge gross annual amount. Some are criminal; some are probably recoverable by stockholders through civil process; they are nearly all dishonorable to both giver and receiver.

Then there are the donations from candidates, which are always 'appreciated' — a gentle word that often cloaks an imperious demand. No law prevents the voluntary gift, and when a man runs for office his supporters usually think that he ought to pay a good share of the election expenses. The candidate is

as frequently of an opposite opinion. I have heard the case warmly put in a district club. An upright and uncanting political amateur said: 'We are working for what we believe in. Mack should give all he can afford to give. He is in earnest enough to head this fight and devote all his time to it. Besides, it's partly for the gratification of his ambition.' That is the argument in a nutshell, and from that point to suggesting the duty of contribution is but a step, and a slightly longer second step to the exaction of money as a condition of nomination. . .

The objections to these bargained or unbargained assessments of candidates are so serious that they should be altogether prohibited by law. They create an undue advantage in favor of men of wealth as against men of character and ability, and they mean that many young men mortgage their whole public future for the help which they receive at the outset of their political career, when they incur obligations which they can pay only by prostituting their official positions.

But a far graver abuse, that has become a National scandal, is the assessment of office-holders. . . The opportunities for wringing this despicably mean toll from the most poorly paid of the Government's servants are almost boundless, for there are about 280,000 men and women in the classified Civil Service, receiving salaries reaching a total each year of $175,000,000 — an annual wage of only $625 for each employee.

Everywhere campaign committees send their requests for subscriptions to subordinate Federal office-holders. Their terms are almost invariably polite, and they assume that the contribution is to be wholly voluntary. But these casual printed or typewritten appeals are understood by the Government employees to be perfectly definite orders to contribute or suffer the consequences. Many would resist the injustice of such a demand, but they believe that to do so would be to quarrel with their bread and butter. On the whole, perhaps the notion is absurd, but every department can furnish a few examples which lend color to the belief that complaint to the authorities is dan-

gerous. Besides, there is a spirit abroad in the service that holds such an act treason. But the call is not always gently veiled; it often becomes a peremptory demand. Some of the cases in the last campaign were flagrant. In Kentucky postal clerks and other employees of the Rural Free Delivery were by letter ordered to stand and deliver in the following fashion: 'The position you hold in the party shows your active interest in its principles and policies and your desire for its success. We therefore confidently expect aid from you and hope to receive a liberal contribution for the legitimate purpose only of paying the expenses of our organization. We trust your contribution will not be less than $70.' The Chairman of the Iowa Republican State Committee sent a letter to each Iowan in the classified service in Washington, requesting what he called 'the surrender of an equitable part of the salary you are receiving from the Government,' and he defined the 'equitable part' to be three per cent. of the clerk's salary.

The law of the land does not forbid office-holders to contribute to campaign funds, if they wish to do so. It merely prohibits one office-holder from approaching another with such a demand, and no one is permitted to solicit political contributions in a Federal building. It is an easy matter to evade a lax law, and so little legal evidence sufficiently definite to warrant a prosecution is ever laid before the Civil Service Commission that prosecutions are rarely begun. . .

These methods of filling party coffers are in general use today in the present State and municipal campaigns. By the tens of thousands such letters and circulars are now being sent out from political headquarters. They take many forms. One will begin with a covert threat: 'I am directed on behalf of the Finance Committee —.' Another, typewritten and in the usual style giving among names of the Finance Committee four city officials, is, in defiance of law, sent to hundreds of place-holders. The Chairman claims that he did not know that the addresses were city employees. A third typewritten letter is signed with a rub-

ber stamp, and, in absence of proof that its use was authorized, prosecution is impossible. . .

Our present way of financing campaigns has become a part of the political system of the land. A private individual is now rarely asked for a contribution, and the money gifts of disinterested citizens have dwindled until they are an entirely negligible source of revenue. Now and again a reform movement is so supported, but even in such cases by far the largest part of the fund raised is supplied by a small number of wealthy men, who thus exert an influence out of all proportion to their numbers on the policies of parties. They are often full of self-sacrifice and noble ideals, but because they are out of sympathy with the great mass of the people for whom they labor, they are continually building on sand. The days of the rank and file subscriptions of $2 and $5 seem gone forever. Men punctually pay as a matter of course for the support of their churches, clubs, benefit societies, and newspapers; and they should do the same for their political parties. But a generation has grown up with an idea that a party should be self-supporting. Yet political parties are not wealth-producers, and they are fast reaching a point, even Nationally, where they can maintain themselves only by selling, or pretending to sell, a part of the public rights of which they are the custodians through the officers whom they elect. The politicians to a man are skeptical of the possibility of supporting a political campaign by popular contributions, and their cynicism completes the despairing side of the picture. Privately their scoffing is voluble — there is no way but the present way, and that is the best of all possible ways. Publicly they are silent or noncommittal. . .

But a politician sees the worst side of human nature, and, like a policeman, is a bad judge of the morals of the common run of men. There are two hopes for the future, and both are bright. There is a remarkable revival of civic righteousness sweeping over the land that is awakening men to a loftier conception of their duties as citizens. With this an aroused public sentiment

already demands the enactment of a law against corporate contributions. When political managers feel the pinch of this legally enforced poverty, they will be driven to appeal to the pocket of the individual voter. Plunkitt in his wrath against the Civil Service blurted out a deeper truth than he knew of when he said that a political organization is like a church. 'It does missionary work like a church, it's got big expenses, and it's got to be supported by the faithful.' The churches that are maintained by small voluntary contributions from thousands of worshipers are living, growing realities. Those whose support comes from endowments and the donations of a few wealthy communicants have already lost their usefulness. The 'boss' is the man who can procure the 'dough,' and the autocracy that he has founded among us has its origin in the failure of citizens not only to exercise their political rights, but to furnish the money for the absolutely necessary expenses of their political parties. Representation without taxation is becoming fully as great a wrong as taxation without representation.

A renewal of the old custom of small contributions for a campaign would give a different quality to the fund, and induce respect for it. An honest subscription for a legitimate purpose, it could no longer be looked upon as 'honest graft,' and economy of expenditure and public accounting would follow. Fifteen million dollars is probably the wildest estimate that has been placed on the immediate cost of the last Presidential campaign. Yet this amounts to but $1.11 for each elector. A fifty-cent piece from every voter would more than cover every lawful expense of a campaign, and go far toward freeing both parties from the evil influence of 'bosses' and corporations.

13. CAMPAIGN EXPENDITURES AND PUBLICITY [1]

One of the most interesting attempts to put down the evil of excessive party expenditures is the expedient adopted by Oregon to fix the cost of running for office.

The corrupt practices act was adopted under the initiative in 1908 by popular vote of 54,042 to 31,301. It provides that no candidate for office shall expend in his campaign for nomination more than 15 per cent of one year's compensation of the office for which he is a candidate, provided that no candidate shall be restricted to less than $100.

Publicity Pamphlet

The act provides, however, for the publication of a pamphlet by the secretary of state for the information of voters, in which pamphlet a candidate in the primary campaign may have published a statement setting forth his qualifications, the principles and policies he advocates and favors, or any other matter he may wish to submit in support of his candidacy. Each candidate must pay for at least one page, the amount to be paid varying from $100 for the highest office to $10 for the minor offices. Every candidate may secure the use of additional pages at $100 per page, not exceeding three additional pages. Any person may use space in this pamphlet in opposition to any candidate, the matter submitted by him being first served upon the candidate and the space being paid for the same as in the case of candidates. The matter submitted in opposition to candidates must be signed by the author, who is subject to the general laws regarding slander and libel. Information regarding state and congressional candidates is printed in a pamphlet issued by the secretary of state, one copy being mailed to each registered voter in the State. Pamphlets regarding county candidates are issued by the county clerk and mailed to each voter in the county.

[1] Bourne, Jr., J., *Speech in the United States Senate.* Thurs., May 5, 1910; p. 13 *et seq.* (pam.).

These pamphlets must be mailed at least eight days before the primary election. The amount of money paid for space in the public pamphlet of information is not considered in determining the amount each candidate has expended in his campaign; that is, he is entitled to expend in his primary campaign 15 per cent of one year's compensation in addition to what he pays for space in the public pamphlet.

Prior to the general election the executive committee or managing officers of any political party or organization may file with the secretary of state portrait cuts of its candidates and typewritten statements and arguments for the success of its principles and the election of its candidates and opposing or attacking the principles and candidates of all other parties. This same privilege applies to independent candidates. These statements and arguments are printed in a pamphlet and mailed to the registered voters of the State not later than the tenth day before the general election.

Each party is limited to 24 pages, and each independent candidate to 2 pages, each page in this pamphlet being charged for at the rate of $50 per page. In the campaign preceding the general election each candidate is limited in campaign expenditures to 10 per cent of one year's compensation.

For the purposes of this act the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow-official or fellow-employee of a corporation is deemed to be that of the candidate himself. Any person not a candidate spending more than $50 in a campaign must file an itemized account of his expenditures in the office of the secretary of state or the county clerk and give a copy of the account to the candidate for whom or against whom the money was spent.

Legitimate Use of Money within Limit

While the corrupt practices act limits the candidate to the expenditure of 15 per cent of one year's salary in his primary

campaign and 10 per cent of a year's salary in the general campaign, in addition to what he pays for space in the publicity pamphlet, yet the law does not prohibit any legitimate use of money within this limitation. The act makes it possible for a man of moderate means to be a candidate upon an equality with a man of wealth.

Let us take a concrete example, as a means of illustrating the operation of Oregon's corrupt practices act. The salary of the governor is $5,000 a year. A candidate for the nomination for governor may take a maximum of 4 pages in the publicity pamphlet, and thus, at a cost of $400, be able to reach every registered voter of his party in the entire State. In addition to that $400 he may spend $750, or 15 per cent of one year's salary, in any other manner he may choose, not in violation of the corrupt practices act. A candidate may purchase space in the advertising columns of a newspaper, but in order that this paid advertising shall not be mistaken for news the law requires that all paid articles be marked as such.

The law expressly provides that none of its provisions shall be construed as relating to the rendering of services by speakers, writers, publishers, or others for which no compensation is asked or given, nor to prohibit expenditure by committees of political parties or organizations for public speakers, music, halls, lights, literature, advertising, office rent, printing, postage, clerk hire, challengers or watchers at the polls, traveling expenses, telegraphing or telephoning, or the making of poll lists.

The successful nominee in the primary may spend in his general campaign 10 per cent of one year's salary, this expenditure, in the case of a candidate for governor, being $500. In addition to this 10 per cent of a year's salary he may contribute toward the payment for his party's statement in the publicity pamphlet to be mailed by the secretary of state to every registered voter. In the publicity pamphlet for the general campaign each party may use not to exceed 24 pages, at $50 per page, making the total cost to the party committee $1,200, or about $100 for each candidate.

The candidate is therefore limited to an expenditure of $600 in his general campaign, only $100 of which is necessary in order to enable him to reach every registered voter. He could reach every registered voter in his party in the primary campaign for $400. Under no other system could a candidate reach all the voters in two campaigns at a total cost of $500.

Improper Acts Prohibited

The Oregon corrupt practices act encourages and aids publicity, but prohibits the excessive or improper use of money or other agencies for the subversion of clean elections. Among the acts which are prohibited I may mention these:

Promises of appointments in return for political support.

Solicitation or acceptance of campaign contributions from or payment of contributions by persons holding appointive positions.

Publication or distribution of anonymous letters or circulars regarding candidates or measures before the people.

Sale of editorial support or the publication of paid political advertising without marking it "Paid advertising."

Use of carriages in conveying voters to the polls.

Active electioneering or soliciting votes on election day.

Campaign contributions by quasi public or certain other important classes of corporations generally affected by legislation.

Intimidation or coercion of voters in any manner.

Soliciting candidates to subscribe to religious, charitable, public, and semi-public enterprises; but this does not prohibit regular payments to any organization of which the candidate has been a member, or to which he has been a contributor for more than six months before his candidacy.

Contribution of funds in the name of any other than the person furnishing the money.

Treating by candidates as a means of winning favor.

Payment or promise to reward another for the purpose of inducing him to become or refrain from becoming or cease being a candidate, or solicitation of such consideration.

Betting on an election by a candidate, or betting on an election by any other person with intent to influence the result.

Attempting to vote in the name of another person, living, dead, or fictitious.

Publicity of Campaign Expenditures

There is no interference with such legitimate acts as tend to secure full publicity and free expression of opinion. Personal and political liberty is in no way infringed upon, the only purpose being to prohibit the excessive use of money, promises of appointment, or deception and fraud.

The corrupt practices act requires that every candidate shall file an itemized statement of his campaign expenditures within fifteen days after the primary election, including in such statement not only all amounts expended, but all debts incurred or unfulfilled promises made.

Every political committee must have a treasurer, and cause him to keep a detailed account of its receipts, payments, and liabilities. Any committee or agent or representative of a candidate must file an itemized statement of receipts and expenditures within ten days after the election. The books of account of any treasurer of any political party, committee, or organization during an election campaign shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district. Failure to file statements as required by law is punishable by fine.

The candidate violating any section of the corrupt practices act forfeits his right to the office. Any other person violating any section of this act is punished by imprisonment of not more than one year in the county jail or a fine of not more than $5,000 or both. The candidate is also subject to the same penalties.

14. THE CORRUPT PRACTICE LAWS OF MARYLAND[1]

Though state legislation on corrupt practices leaves much to be desired, several states have fairly complete laws defining acts which must not be committed in connection with elections. Typical of the better class of these statutes are those passed by Maryland.

Maryland. Cd. '04, Art. XXVII, sec. 29. Giving or promising any reward to influence voters, or keeping open any place where intoxicating liquors or victuals are gratuitously dispensed upon an election day is punished by imprisonment and fine.

Art. XXXIII, secs. 87-102. Registering in the name of another or where one is not a qualified elector or aiding another to so illegally register, or, preventing by force, intimidation or bribery the registering or voting of one who has a legal right to register or vote is punished by imprisonment in the county jail or the penitentiary for from six months to five years. One convicted of bribery or attempting to vote when disfranchised is punished by imprisonment in the penitentiary for from one to five years. False declarations of one's ability to mark one's ballot or marking one's ballot so that it may be discovered how he has voted, is penalized. Every employe who is qualified to vote is entitled to absent himself from his employment not longer than four hours to vote and is liable to no penalty therefor. Disposing of liquors on election day or making any bet upon the elections is punished by a fine.

Laws '08, p. 125, secs. 163-172. Every political committee must operate through a political treasurer who must submit a sworn itemized statement of all money passing through his hands and state to whom it was paid and for what purpose. Failure to do so subjects him to a fine of from $300 to $1,000 or to a two years imprisonment or both. None but a candidate may within six months of an election contribute money or property to

[1] Lowrie, S. G., *Corrupt Practices at Elections*. Madison, Wis., Feb. 1911, pp. 38-40. (Summary.)

the success or defeat of a candidate, party or proposition except through a political committee. No candidate may within six months of a campaign make any such payments except an amount determined by the number of voters voting at the last election for the office he seeks and for such personal expenses as postage, printing, telegraphing, travel, etc. The political treasurer may expend money only for certain designated purposes such as conducting public meetings, printing and circulating campaign literature, expenses of committee headquarters, traveling expenses, carriages for voters on election day, etc. Payments must be reasonable for the services performed and be authorized by the political secretary or chairman. All campaign material issued in periodicals shall be designated "advertising." Within twenty days after an election or primary, detailed, sworn statements must be filed, stating what the assets and liabilities of the political committee have been during the campaign. Failure to record such a statement is punishable by a fine of from $300 to $1,000. Such statements are to be on file and open to public inspection for three years. It is a corrupt practice to give, offer, or receive money or other inducements to influence voters; to make campaign contributions, except to a political agent or treasurer, or to make any payments in a name other than one's own; for employers to attempt to influence the political actions of their employes by notices posted in the establishment or printed on pay envelopes threatening a lessening of wages or work in the event of any election contingency; or to give entertainment to a voter to influence him. Violation of these provisions is penalized by a fine of from $300 to $1,000, imprisonment and ineligibility for public office for four years. The officers or agents of a corporation who make corporation contributions to any political campaign fund are personally liable to a fine not to exceed $5,000 and imprisonment not exceeding three years.

Laws '10, p. 126. What are offenses against the general election laws are also offenses if committed in the primary and are

punishable in the same way. Penalties are specified for the sale of liquors and for betting on the primary.

Candidates for the U. S. Senate must file within thirty days of the primary, sworn, itemized statements of their expenses. No certificates of election are to be issued until campaign expense accounts have been filed and verified. Failure to file statements is punished by a fine of from $300 to $2,000 and imprisonment not longer than two years or both.

15. THE CHICAGO MUNICIPAL VOTERS' LEAGUE[1]

The large number of names on our ballots and the fact that in our cities the average man does not know the candidates, has made it necessary, if the voter is to vote intelligently, to have some extralegal organizations which will place before the voter the facts upon which a judgment as between various candidates can be made. The Chicago Municipal Voters' League has been unusually successful in this work.

(a) *Its Organization*

The Municipal Voters' League — What it Really is.

The Municipal Voters' League is an independent political organization the sole purpose of which is the election of honest and competent municipal officials in Chicago. It has confined its attention to members of the City Council. It is absolutely non-partisan and intensely practical. It was organized in 1896 by a Committee of One Hundred, composed of a Republican and a Democrat from each of the thirty-four wards then in the city, and thirty-two members chosen from the city at large without regard to residence or political affiliations. This Committee of One Hundred was the result of a meeting of about two hundred and fifty representatives of various clubs and organizations called together to devise some means of improving conditions in the City Council, which had reached the final stage of open and shameless corruption and had become a most dangerous menace

[1] Pamphlet published by the Chicago Municipal Voters' League, 1910.

to the city. The Municipal Voters' League thus formed consists of an Executive Committee of nine men, supported by a large general membership of many thousands of voters in all parts of the city, who signed cards in 1896, expressing approval of its purposes and methods, or who have since identified themselves with its work, or supported its recommendations at the polls.

The members of the Executive Committee serve for three years, the term of one-third of the committee expiring each year. Vacancies are filled by the unanimous vote of those holding over. No meetings of the general membership are held; but the Executive Committee appoints a Finance Committee and an Advisory Committee outside of its own membership. The Executive Committee alone has the authority to use the name of the League, or to commit it for or against any candidate or measure. No candidate for office can become or remain a member of the Executive Committee.

There has never been a division on political lines. Indeed, in the entire history of the League there has been but one important action taken that was not directed by the unanimous vote of the Executive Committee.

By thoroughly investigating the qualifications and character of aldermanic candidates and fearlessly publishing the results of such investigations, the Municipal Voters' League has deservedly won the confidence and support of the honest and intelligent voters of Chicago. It assumes that character and capacity are the fundamental qualifications for useful public service; that men having these qualities will faithfully represent the people, treat justly all private interests and dispose of every public question on its merits. It represents, and it claims to represent, only those who approve of its purposes and its methods. It makes no pretenses of infallibility, and guarantees the future conduct of none of the candidates whose election it may advise. It simply recommends to the voters of Chicago that course which its investigations lead it to believe will be for their best

interests; and it states concisely, but clearly, the facts upon which its conclusions rest. It has no political or personal interest to serve; no scheme to which it is committed. It knows neither creed, nor class, nor party. It has but one aim — the election of honest and capable officials, to whom the interests of the entire city are of paramount importance. It does not seek to foist on any ward a candidate of its selection. It does seek to co-operate in every ward with good citizens of every party in the formation and execution of plans for securing the nomination of men for whose election it can actively exert its efforts and its influence.

It is the policy of the League not to suggest candidates in the first instance, but to investigate and report on those named by others. When necessary to secure at least one fit candidate in a given ward, it actively co-operates with the public-spirited citizens of that ward in securing the nomination of such a candidate at the party primaries, or by petition. When the nominations have all been made, the League takes an active part in the wards where there is danger of the election of unfit men. In such cases it not only takes efficient measures to inform and arouse the voters but it participates as an active political factor in the aldermanic campaign, using every legitimate means to carry the election. It has no use for impractical idealism, and it chases no rainbows. It believes in seizing and using whatever proper means may be at hand to reach the best practically attainable results.

Each year the League adopts a little platform which is confined to a declaration of those general and fundamental principles which seem essential to the preservation of the rights of the people and the proper administration of our municipal affairs. Sometimes there is a special issue which may afford a test of the sincerity and intelligence of those general pledges of honesty and fidelity so readily given and so easily evaded. The League does not neglect such opportunities. Its platform is tendered to each candidate for his approval, disapproval, or modification. If it

does not accurately express the views of any candidate he is not only at liberty, but the League desires him to make such modifications for himself as will render the platform to which he does subscribe the accurate expression of his own opinions. The League desires no man to sign its platform because it is its platform. It does insist, however, that every aldermanic candidate shall in some way state fully, definitely, and publicly his own views upon the important issues and principles involved. . .

(b) *Its Platform* [1]

1. The aldermanic office involves service for the whole people. An alderman should discharge his duties with an eye not solely to the local interests of his ward, but to the city's interests at large.

2. The office of alderman is non-partisan in its nature, and should be discharged without reference to party affiliations.

3. All council committees should be organized strictly on the basis of integrity and fitness and without regard to party.

4. No alderman should accept or hold any duty or employment, or be, directly or indirectly, connected with, or engaged in, any business or enterprise in conflict with the city's interest, or tending to interfere with the disinterested discharge of his duties, or to prevent his unrestricted activity for the public good.

5. No alderman should seek or demand a permit, special privilege or immunity for any individual or corporation in conflict with the public interest, or denied to the citizens generally.

6. The health and welfare of the people depend in large measure on hygienic and sanitary conditions, and every alderman should strive to have these constantly improved and maintained in the best possible state. The public health should in no instance be sacrificed to special interests.

7. The city in all its departments should have a thorough and businesslike system of accounting and auditing. Through periodic examinations, the employment of experts and the tech-

[1] Platform of the Chicago Municipal Voters' League, 1911, *Chicago Record-Herald*, Mar. 29, 1911 (excerpt).

nical study of the functions, administration and requirements of the various branches of municipal government, improved business methods should be introduced into all of them, so that not only may economies be effected, but the most approved and skilled service rendered to the people.

8. An alderman should uphold the strict enforcement of the civil service law and the application of the merit system to municipal employment.

9. Grants for street railways, subways, tunnels, wharves, docks and other public utilities, including telephone, telegraph, gas and electric lighting, heating, refrigerating, power and other like services, should be for as short a term as is consistent with the best service to the public; provided, no grant for a term exceeding twenty years should become effective unless and until approved on a referendum. All grants to a given corporation or individual should expire at the same time, and no supplemental or collateral grant should run beyond the time when the main grant expires.

10. No grant should be made for any public utility without expressly reserving to the city the opportunity for municipal purchase, at or before the expiration of such grant, upon fair terms and reasonable notice. . .

I, the undersigned, a candidate for alderman from the —— ward, freely place the foregoing platform before my constituents and the whole people of the City of Chicago and pledge myself to adhere to these principles and to work and to vote in committee and on the floor of the council to carry out the same.

(c) *Its Estimate of Candidates* [1]

To THE VOTERS OF CHICAGO: For the sixteenth year the Municipal Voters' League submits to the people of Chicago its official report and recommendations for the aldermanic elections.

[1] Extract from report in *Chicago Record-Herald*, Mar. 24, 1911.

Not the mayor, but the aldermen will settle the price of gas and of telephones and such big questions as the subway and the harbor. No matter who is elected mayor it is of vital importance to have an able and honest council. Do not neglect the aldermanic contest in your ward. Vote for the best man regardless of his party or mayoralty affiliations. . .

Seventeenth Ward (Short Term) — Vote for Walkowiak

Stanley S. Walkowiak — Democrat; lives 1310 Cornel street; lawyer, 132 South Clark street; born in the ward 1877; graduate St. Stanislaus parochial school; two years Notre Dame University, and graduate St. Ignatius College 1900, and of Chicago College of Law 1903; ran for alderman last year, at which time league criticised his political affiliations; man of ability, energy and ambition; well spoken of by men competent to judge, who consider that he may develop independence and exhibit ability which would be a credit to the ward; signed league platform.

Stephen P. Revere — Republican; lives 1057 Grand avenue; until recently superintendent Illinois Free Employment office; born San Andreas, Cal., 1856; common school education; in ward forty-five years; former contractor; in council 1885-7 and again in 1895-7 where he made record as constant supporter of franchise grabs; in 1897 when Revere was a candidate against James Walsh gross election frauds were committed in Revere's interest. Walsh contested the election, carried his case to the Supreme Court, and won against the active fight made by Revere and the gang members in the council. Revere was unseated and the judges of election who committed the fraud sent to the penitentiary. This former gangster should be kept out of the council, which he disgraced so far as was in his power while he was an alderman. . .

Nineteenth Ward — Vote for Cimbalo

Michele Cimbalo — Socialist; lives 920 South Morgan street; inspector for Immigrants' Protective League, 157 Plymouth court; born Italy 1884; in Chicago and ward fourteen years;

general course University of Illinois eighteen months; shepherd in Italy, newsboy, water boy for railroad gangs, later bookbinder by trade, then stationary fireman; intelligent and energetic.

Onofrio Pacelli — Republican; lives 518 Ewing street; foreman on street car work; nine years in bailiff's office; not well qualified.

John Powers — Democrat; lives 1284 Macalister place; president Pullman Chemical Company, 1701 North Ashland avenue; finishing eleventh term; successor of Cullerton as gang leader for corporate influences; has systematically betrayed the people of the ward and injured the people of the city; telephone "jammer"; the man in charge of the passage of the notorious Ogden gas ordinance. . .

16. NATIONAL PARTIES IN LOCAL ELECTIONS [1]

The peculiar national character of our party organization has made all elections except that of the president subservient to the national party interests. Local issues as a rule do not dominate local elections even when held at times when no national officers are to be elected.

How shall the political machinists conduct themselves and their machinery in a state election where national political issues are not directly involved? Theoretically, they may refrain from taking any part in the state election supposed, but practically there are great obstacles in the way of this quiescence. In the first place, the election may be, and very commonly is, both national and local. President, congressman, governor, legislature, mayor, and city council are often voted for on the same ballot. Let us suppose that A and B prefer X for president, and that C and D prefer Y. A and D prefer U for governor, B and C prefer Z. It is difficult, at the least, for A, after spending his morning with B in planning how to defeat Y, D's candidate for the presi-

[1] Lowell, F. C., "The American Boss," *Atlantic*, 1900; pp. 292–293.

dency, to spend the afternoon with D in planning the defeat of Z, B's candidate for governor. The difficulty is greatly increased, indeed it becomes insuperable, if A and D agree in considering the presidential election so much more important than the gubernatorial that each of them would, in case of necessity, sacrifice his gubernatorial to realize his presidential preferences.

Even if the national, state, and municipal elections occur at different times, the trouble just suggested exists, though in a less degree. Political machinery is not created at a week's notice, or in a month's. In truth, the difficulty is fundamental in human nature. Men do not vote for Republican candidates altogether because of a reasoned preference for these candidates as individuals, or for the principles which Republican candidates are supposed to represent. Most voters are largely influenced by habit, tradition, and sentiment. That a man is a consistent Democrat often means little more than that he is attached to the Democratic name, and always votes for Democratic candidates because they are labeled with it. Such a Democrat naturally prefers a Democratic governor to a Republican governor, a Democratic alderman to a Republican alderman, although the principles of the Democratic national party have little or nothing to do with the action of governors and aldermen. This disposition of the voters makes it almost impossible to separate local from state politics, or to keep the machinery primarily devised for national purposes from use in local elections. Municipal elections outside the large cities, indeed, when they occur apart from state and national elections, are not infrequently conducted with little regard for national politics; so sometimes is the election in a single legislative district. But these important and interesting exceptions cannot hide the rule or the conditions of human nature upon which the rule is based. To expect those who manage the local machinery of a national party to keep that machinery idle in a state election, or in the municipal election of a large city, is to expect the impossible under existing conditions. The introduction of national politics into local

elections is caused not so much by the intrigues of political machinists as by the workings of ordinary human nature.

If, then, the parties and their machinery are to be the same in national and state elections, and commonly the same in national and municipal elections, how will the operative machinist, who is thoroughly and unselfishly devoted to the national triumph of his party's principles and candidates, regard the local election in which he and his machine are to take part? After examining the standpoint of an ideal machinist, we can lower our view to that of the machinist of less exalted character. Plainly, a state or municipal election is not unlikely to disturb the working of political machinery which has been created to affect national elections. If there is a real issue in local politics, even if the personality of a candidate for local office is marked, some voters who are Republicans on national issues will vote the Democratic local ticket. Though this loss will be made good more or less by the votes of some who are Democrats on national issues, yet the change will disarrange the Republican machine and may endanger the success of its party's national principles. A machinist seeks to bring out the full Republican or Democratic vote, and to increase that vote within certain limits, by improved machinery. He dreads great changes, even though they are in his own favor, for he knows that they bring their reaction. If the state branch of the national party adopts an important state issue, he knows that some of his men will stray, and, worse than all, that carefully formed habits of partisan discipline will be weakened; hence, so far as state politics are concerned, he tends to caution. The voters of his party may believe in prohibition, high license, low license, or unrestricted sale of liquor, so long as the working of his machinery is not disturbed. The Republican machine in Massachusetts, for instance, once procured the submission to the people of a prohibitory amendment to the state constitution, but declined to take sides upon the amendment's adoption. The machine wished to get the question out of its way without losing support by taking sides. The

faithful national machinist will also dread the disturbance caused by an exciting municipal election, and here the man whose chief interest is in state politics will agree with him. If the machinist is honest and well-intentioned, he will desire honest and efficient administration by his party in city and state, as well as in the nation, knowing that this will commend his machinery and the principles it exists to promote; but he will hesitate to disarrange the machinery by violent interference with a particular piece of maladministration, especially if it concerns the state or municipality rather than the nation.

17. MUNICIPAL POLITICS AND BOSSISM[1]

City populations furnish the greatest opportunity for bad political conditions since the people do not know each other and because they are within easy reach of those who wish to manipulate their suffrages. Some of the ways in which the "boss" succeeds in getting a firm grip upon the local government are indicated here.

The political forces that resist every advance toward the attainment of government accountable to the people governed and make for the establishment of a government in the interest of a privileged few are nowhere so active or so powerful as in the city. The city itself creates the economic conditions that give these forces full play. The urgent needs of the city's community-life for water, transportation, light, telephonic communication, and similar communal services can only be met through governmental action. The men engaged in supplying these services are necessarily in the most intimate and constant contact with the city government, while the business interests and occupations of the vast majority of men bring them but rarely if at all into conscious relation with the government of the city in which they live.

[1] Deming, H. E., *Government of American Cities*. G. P. Putnam's Sons, New York, 1910; pp. 192-197.

On the one hand, the satisfaction of urgent community-needs has created a class of special businesses which are made profitable by influencing governmental action; on the other, is the great mass of the citizens to whom any special effort to reach or influence a city official involves business loss. The enjoyers of special privilege have been constantly watchful of the conduct of city government and constantly active in securing the election and appointment of public officials favorable to their business plans. The general body of the citizens, secure under the constitution in their personal and property rights and absorbed in business callings and occupations that neither need special assistance nor invite any interference from the city government, have paid, at most, only so much attention to it as voting for their regular party candidates on election day might require and, perhaps, at times contributing to their party's treasury.

The exploiters of the need for transit, light, and other public services have found in each city a natural ally in every man who desired some selfish personal advantage from its government. The domination of the state legislature over municipal affairs brings to the state capital the franchise seekers from every city, there to work in congenial and unwholesome fellowship with every other special interest in quest of legislative largess. Neither is the hunter of governmental bounty unknown to Washington. His insidious influence has been felt in every department of our government. The same cause, hunger for the enormously valuable special privileges at the disposal of government under modern economic conditions, has been active in nation, state, and city.

The privilege-seeker has pervaded our political life. For his own profit he has wilfully befouled the sources of political power. Politics, which should offer a career inspiring to the noblest thoughts and calling for the most patriotic efforts of which man is capable, he has, so far as he could, transformed into a series of sordid transactions between those who buy and those who sell

governmental action. His success has depended upon hiding the methods by which he has gained his ends. All the forms through which the voters are accustomed to exercise their rights have been strictly observed. Untroubled by conscientious scruples, consistently non-partisan, he has welcomed the support of every party and been prompt to reward the aid of any political manager. Step by step he gained control of the party machinery. His fellow citizens have been in profound ignorance that he named all the candidates among whom they made their futile choice on election day.

For a long time our real government had not been the one described in constitution or statute; our electoral methods had long ceased to furnish a genuine opportunity for the expression of the popular will; the actual government had passed into the control of an elaborate feudal system with its lords and overlords, each with his retinue of followers and dependents, all supported at the expense of the public; yet the people were quite unaware that the ancient methods upon which they relied in order to have an effective participation in the conduct of the government and to secure public officials responsible to them and actively concerned to protect the common interest and promote the common good were rapidly becoming mere shams.

In every department of human affairs requiring the exhibition of skill, the expert, sooner or later, inevitably becomes prominent. There was an insistent demand for the expert of every grade from the highest to the lowest in an undertaking involving so much knowledge of human nature, such mastery of detail, so much persistence of effort, and such adroitness as the conduct of government by purchase under the guise of a government by the people. In response to this demand came the "Boss," the expert who attended to the infinite details and complications of party management and organization and supplied the public officials — and thereby the kind of government — the privilege-seeker desired.

The boss was a distinct advantage to the class that throve

by government favors. His real occupation was unknown to the people, and if at first they did not welcome his appearance they thought him nevertheless the natural and perfectly legitimate outcome of their accustomed political methods, a leader whom they could displace when he lost their approval. They did not realize his ominous significance. Gradually it began to dawn upon them that they could neither select nor elect him; that he was not a person, but a system. The individual might disappear or be displaced, but the boss always remained. Not until his sinister figure was appearing in city after city and state after state and even in the United States senate, not until there was overwhelming evidence of a hierarchy of bosses, big and little, did there begin to be a general awakening of the people to the existence of a system wholly mercenary, reared upon the greed for special privilege and the sale of such privilege by the skilled manipulations of the political party-organizations.

The issue has now been fairly made up between Special Privilege and Democracy, between government by purchase and government by the people. The contest will be a long one. It has already taken many forms and will assume countless more. Its crucial battles will be in the city, for there the struggle between privilege and the common good is most constant and most intense. It is in the city that the victory of the one side or the other will be most far reaching in its consequences, for nothing is more certain than that the overwhelming majority of the inhabitants of the United States will be city-dwellers. This is already true of the Eastern states. The triumph of privilege in the city will mean, therefore, that the vast majority of the American people have been made the subjects of government by purchase. And it will mean much more. The increasing domination in state after state of the city "machines" over the state organization of political parties foreshadows the outcome in state and in nation.

If the fight of the people to put down government by purchase

masquerading in the forms of democracy can be won in the city and a government accountable to the people set up in its stead, democracy will triumph in state and nation. If the people lose their fight in the city, they will lose it in state and nation. The city is the battle-ground of democracy.

X. Direct Legislation and the Recall

1. The Initiative and Referendum [1]

Direct legislation has received its widest use in America in Oregon. The provisions of the state constitution quoted here show the framework adopted there for this new method of popular control.

Section 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or to reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent. of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full test of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by the petition signed by five per cent. of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to

[1] Constitution of Oregon, Articles IV and XVII.

the people. All elections on measures referred to the people shall be had at the biennial regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the State of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

Sec. 1*a*. The referendum may be demanded by the people against one or more items, sections or parts of any act of the legislative assembly, in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this constitution are hereby further reserved to all local, special and municipal legislation of every character, in and for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent. of the legal voters may be required to order the referendum nor more than fifteen per cent. to propose any measure by the initiative in any city or town. . .

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the secretary of state to the people for their approval or rejection, at the next regular general election, except when the legislative assembly shall order a special election for that purpose. If a majority of the electors voting on any such amendment shall vote in favor thereof, it shall thereby become a part of this constitution. The votes for and against such amendment or amendments, severally, whether proposed by the legislative assembly or by initiative petition, shall be canvassed by the secretary of state in the presence of the governor, and if it shall appear to the governor that the majority of the votes cast at said election on said amendment or amendments, severally, are cast in favor thereof, it shall be his duty forthwith after such canvass, by his proclamation, to declare the said amendment or amendments, severally, having received said majority of votes, to have been adopted by the people of Oregon as a part of the constitution thereof, and the same shall be in effect as a part of the constitution from the date of such proclamation. When two or more amendments shall be submitted in the manner aforesaid to the voters of this state, at the same election, they shall be so submitted that each amendment shall be voted on separately. No convention shall be called to amend or propose amendments to this constitution, or to propose a new constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular general election. This article shall not be construed to impair the right of the people to amend this constitution by vote upon an initiative petition therefor.

2. THE WEAKNESS OF DIRECT LEGISLATION [1]

Direct legislation, it is feared by many, is bound to be crude because of the lack of opportunity for a sifting of opinion and a recasting of the form the law is to take. Doubts are raised also as to whether it will remove the apathy of "stay at home" citizens. Instead of making easier the work of the already heavily burdened voter it increases his duties.

In order that the referendum may operate as an efficient check upon bad laws it must be intelligently directed. Those laws which need to be held up must be discovered before the end of the ninety days within which it is usually provided that the petition must be filed, and the requisite petition must be secured and filed within this period. If the referendum is to operate effectively in this regard, there must be a careful examination of the laws by persons who are interested in legislative matters and who are willing to scrutinize the acts of the legislature and to devote themselves to the task of securing the necessary petitions. In all probability only a portion of the bad laws will be discovered to be bad within the time limit. Unless the present means for the publication of our state laws are greatly improved, the public generally will be ignorant of the provisions of a large majority of the laws for a considerable period after their passage. It may be expected, therefore, that only those laws in which there is a very general interest, or which so affect the interests of particular individuals that they will make it their business to see that the petition is secured, will be subjected to the popular vote.

One very real danger must be noted. This is that the referendum may be used not only against laws which have been secured by an active and well-organized minority, and which subserve special or class interests, but also to suspend, until the next general election, laws which are really desired by the people.

[1] Sanborn, J. B., "Popular Legislation in the United States." *Political Science Quarterly*, Vol. 23, p. 587 *et seq.*, Dec., 1908.

In order that the referendum may have any effectiveness the percentage of voters necessary to secure the popular vote cannot be very large. It must be a number which can be secured without any real difficulty within the limited time. This requirement makes it possible for special interests which are adversely affected by legislation to prevent its taking effect for a considerable period. That this objection is not fanciful may be seen in the experience of South Dakota last year. In that state petitions have been filed for popular vote upon three laws passed by the legislature of 1907. These laws are: An act extending to one year the period of residence necessary for securing a divorce, an act prohibiting the shooting of quail until 1912, and an act prohibiting theatrical exhibitions, circuses, etc., upon Sunday.

After the referendum petition has been filed, there is still the question of the efficiency of the popular vote. If the bad laws do not, on the whole, slip through unobserved and unchecked by petition, and if the plan be not used to suspend good laws, it is still necessary that it shall secure an expression of the best public sentiment.

Such data as we have show that the referendum vote will be comparatively small. The ordinary experience with these popular votes, either upon laws or upon constitutional provisions, indicates that the vote cast on such questions is usually much smaller than that cast at the same time for candidates for public offices. In an article by Philip L. Allen, in the Boston Evening Transcript of May 23, 1906, figures were given showing the popular vote upon various laws or constitutional amendments. In the instances there cited, seventeen in number, the percentage of this vote to the simultaneous vote for public officers varied from seventy-eight to nineteen. In eight instances the vote was less than fifty per cent; in only six instances did it exceed sixty per cent. . .

Observation shows that in the long run only about one-half of the voters who go to the polls will take the trouble to vote upon laws submitted to them.

These comparisons are made with the number who vote for public officers. If a comparison be made with the total number of the legal voters of the state, the results are much more striking. In an election which for some reason calls out a large vote, as in a presidential year, the total vote cast may run up to about eighty per cent of the voters. In Wisconsin, for instance, in 1904, the vote for governor was seventy-eight and seven-tenths per cent of the voters. In a year in which the general interest is not so great, as for instance in a so-called "off" year, the vote is regularly much smaller. In Wisconsin, in 1906, the vote for governor was fifty-six per cent of the voters. If only sixty to eighty per cent of the voters come to the polls, and if only about one-half of these vote upon referendum matters, even a unanimous vote in favor of a measure means its adoption by a minority of the legal voters of the state.

Statistical studies as to the relative intelligence of the voters and non-voters upon referendum measures are unfortunately lacking. . .

There seems to be little reason to expect that the better element will vote any more strongly at a referendum than at a regular election. The "stay-at-home" vote would be the same in both cases. There is no indication that a referendum election tends to bring to the polls those who do not care to vote for the candidates for public offices. The citizen who does not care to go to the polls and vote for governor would probably not be attracted thither by a chance to vote against a proposed law. If our present political agitation does not stimulate him to activity, there is little hope that additional demands upon his time would move him. It may also be questioned whether those who now neglect their political duties would be a desirable addition to a body of citizens voting upon a proposed law.

Taking those who do their duty in this respect, who regularly vote at the polls, may we assume that the portion of these electors which votes for or against pending laws represents the more intelligent or better element? It is commonly considered that

much of the trouble encountered in the working of our present political system is due to the fact that those who ought to know better ignore their political duties. The more intelligent citizen, when he votes at all, is unfortunately too apt to confine his voting to the election of officers and not infrequently he indicates his choice for only a portion of the offices to be filled. He does not come out to the primaries or to the caucuses. Can we then expect that the better element will constitute, or preponderate in, the body which votes upon pending bills?

What of the other sort of voter, the man who votes at least as often as the law allows, who does as he is told and who furnishes the strength of the machine? Voting on a few laws would offer no terror to him. He could quickly learn where to make the additional marks upon the ballot, and he would remember what was expected of him. There would therefore seem to be little hope that the vote on a law would express any higher public opinion than the vote for the members of the legislature. . .

If we admit, as I think we must, that the proper goal of legislation is a better and more intelligent consideration of pending measures, we must acknowledge that the referendum brings us no nearer that goal. In fact, it probably takes us in the other direction. The consideration which the vast majority of voters can give to a measure submitted to them is necessarily hasty and superficial. A careful examination of even a few laws, in the manner which I have indicated as necessary for a proper appreciation of the effect of one's vote, is impossible to practically every person outside of the legislature. The ordinary voter has little or no time to give to the examination of bills which may be presented to him. If he has the time, he seldom has the facilities for obtaining the information that is needed if he is to vote in a proper manner. Comparatively few voters possess the information which is necessary for an intelligent judgment regarding the numerous candidates and issues of our various elections. Until the voters meet these existing obligations imposed by our political system, obligations which cannot be done

away with by any system of initiative or referendum, we should hesitate to place new burdens upon them.

The referendum tends to place the emphasis at the wrong end of the legislative work. If we elect good men to the legislatures the needs of checks of this kind will largely pass away. The agitation for the referendum has been to a considerable extent due to the failure of the voter properly to perform his duties as an elector. However numerous and complex the causes of this failure may be, one cause which has been very potent is the public indifference to caucuses and elections. If this public indifference continues, we cannot expect that the referendum will be successful. With this indifference removed, the need for the referendum will no longer be so apparent.

An interest in referendum measures can never be a substitute for an interest in elections. The referendum is exceptional. It can never be expected to operate upon more than a few of the many laws enacted. The bulk of our legislation must continue to proceed from our legislatures, unchecked by the referendum. The referendum is then a method of legislation which can affect only a small fraction of the laws, and it depends for its efficiency upon conditions which, if realized, would make its employment largely if not entirely unnecessary.

Against the initiative, as far as its referendum feature is concerned, the same objections may be made as against the referendum when used alone. The popular vote upon a bill proposed by the initiative would be no better and no worse than on a bill passed by the legislature. The initiative would, however, add to the number of bills to be voted on and would thus decrease the attention which the voters could give to each one.

What sort of bills may we expect to see proposed under the initiative? It is not especially important to determine whether they will be conservative or radical. If the system is worthy of attention, undesirable bills will be eliminated by the referendum. The question is as to the form of the bills. Is it to be expected that they will be so worded as to accomplish the desired ends?

Practically every bill which comes before an American legislature is originally introduced in such form that its passage would be extremely unfortunate. It is probably not too much to say that nearly all bills are, in their original form, crude and unworkable. These bills — and the same would be true of those proposed by initiative petition — are the product of one man or of a small group of men. Even when based on a careful and conscientious study of the subject, they have the shortcomings inevitable from the limitations surrounding their origin. Before they can even approximate perfection, they need the public discussion, the criticism of opposing interests, the suggestions of foes as well as of friends. The process of amendment and reamendment, which is possible only in a legislature, is necessary to the normal growth of a bill into a law.

Every subject of importance is apt to be covered by several bills. None of these is perfect; each probably has something of merit. In the legislature, these bills can be considered together; the good portions of each can be accepted and the bad rejected. No such procedure can be followed in the case of initiative measures. If several similar bills are proposed by petition, they cannot be amended and combined. One must be selected and the others rejected, unless, as is entirely possible, more than one act dealing with the same subject is adopted by the popular vote.

The failure of the referendum to afford opportunity for adequate discussion has already been noted. This defect will be felt much more keenly in the case of bills proposed by initiative petition than in the case of bills which pass the legislature in the regular way before they are submitted to the referendum. In the latter case, discussion in the legislature enables that body to bring the bill into something like proper shape. In the former case all the advantages of such discussion, all the suggestions to be derived from the arguments of interests adversely affected by the bill, all the amendments that might be made by parties interested in its passage, are lost. Intelligent legislation is not

promoted by a system which treats a bill, in the shape in which it is presented to a legislature, as a finality.

An illustration of the difference between initiative and regular legislation is found in the "anti-pass" law of the state of Oregon. In 1906 a bill covering this subject was submitted by initiative petition and was adopted by a vote of 57,281 for and 16,709 against. This bill was so poorly worded that, upon a literal reading, it forbade a railroad from issuing passes to its own employees but allowed it to issue them to the employees of other roads. Fortunately the act was not effective, because of the absence of an enacting clause. The legislature of 1907 passed a general railroad law in which the subject of passes was covered in a proper and intelligible manner.

The failure of the initiative to afford opportunity for amendment is met to some extent in the system adopted in Maine and pending in North Dakota. In these states, the legislature may reject the initiative bill and propose a substitute. In such a case both bills are submitted to popular vote, and the voters are called upon to choose between them. This device enables the legislature to correct faults in the proposed legislation. The substitute will undoubtedly be far superior to the initiative bill. The existence of the two bills will, however, complicate greatly the work of the people. The voting upon a single bill is difficult enough; the choosing between competing bills will be much more difficult.

The most that can be claimed for the initiative is that it forces the legislature to act. The laws resulting from this coercion will in most cases be crude and unscientific. From the point of view of the improvement of our legislation in the matter of form, they will mark a long step backward. . .

One other and very fundamental objection may be made both to the referendum and to the initiative. They tend to weaken the sense of legislative responsibility. With the referendum the legislator does not vote for or against a bill, he votes to give the people an opportunity to vote on it. He does not need to ex-

press his own opinion. He may say that his views are immaterial, that even if he is opposed to a bill it would be unjust to refuse to allow the people a chance to express themselves. This feeling will affect his attitude towards all bills, irrespective of the question whether they are actually to be subjected to a referendum vote. Every bill may be thus subjected, and if no petition is filed concerning a particular measure, the people may be considered to have ratified it. They have had the opportunity to act, and if they remain quiescent the responsibility for the bill rests with them, not with the legislature.

The initiative would also shift responsibility. If new laws are needed, they may be submitted by the initiative petition. If the legislators do not propose the measures needed, they are not to be blamed. The failure of the people to use their initiative indicates that they do not desire action upon the matter.

The diffusion of responsibility which would result from shifting the burden of legislative reform from the few to the many is in direct opposition to the teachings of political experience. The way to get good government is not to scatter the responsibility among a number, so that each can dodge the blame if the work goes ill or claim the credit if it goes well. The approved way is to make each responsible for his appointed task and to hold him rigidly to that responsibility.

3. OBJECTIONS TO DIRECT LEGISLATION EXAMINED [1]

Advocates of direct legislation believe that the realization of his increased responsibility and influence in deciding the laws by which he will be governed will lead the average man to a greater interest in public affairs.

Nor indeed are the evils which it is prophesied will come with direct legislation attributable to it, for they exist under our present party system and would, it is insisted, not be increased by the adoption of direct legislation.

[1] Lobingier, C. S., *Arena*, Vol. XXXIV, pp. 234–240, 1905.

The attitude of expert and professional opinion has not, as a whole, been favorable to the extension of the Swiss referendum. . . An examination of the literature of the subject will disclose that the chief objections urged by these opponents of the referendum may be reduced to four, viz.: (1) Indifference of electors; (2) complexity of legislation and incapacity of electors; (3) obliteration of distinction between constitutional and other law, and (4) impairment of legislative influence.

Of these the first is the one most frequently and insistently urged. . . So M. Deploige, a Belgian critic, who is none too friendly, declares of the referendum: "It is a little ridiculous to talk of legislation by the people when more than one-half the citizens refuse to exercise their legislative rights."

But it seems not to have occurred to the opponents of direct-legislation that this line of argument would tell quite as strongly against a cherished American practice — the submission of constitutions to a popular vote. Judge Simeon E. Baldwin, speaking of a state where submission has been followed from the first, says: "Experience shows that much less interest is taken by the people in propositions for constitutional amendments than in elections to office. The personal element is always wanting, and, generally, that of party advantage." . .

Now the benefits of popular ratification form a subject on which there is a practical unanimity of opinion among the publicists of the present day. Professor Hart himself observes: "In the United States we have already the good effects of the referendum, so far as it deals with changes of the constitutions, the permanent and superior part of our law."

Among these "good effects" are, it is generally conceded, the permanence of constitutions and the educational influence upon the electors — all this in spite of the fact that a large percentage apparently fails to exercise the privilege. It is difficult to understand why similar advantages might not accrue by applying the system to ordinary legislation.

Moreover, in some parts of the country, at least, the voters

display a growing appreciation of their function as constitution-makers. Thus in California, during a period of a dozen years, in which some twenty-eight amendments were submitted, an average of about two-thirds of those voting at the election availed themselves of their right to pass upon these proposed changes in the fundamental law. On the question of extending the franchise to women, which was submitted at a presidential election, 83.4 per cent of those voting for presidential candidates registered their choice, while the lowest constitutional vote during the period was 39.4 per cent, which was cast on an amendment to which there was little opposition. In Texas and other states of the South and West, the figures reveal on the part of the electorate an increasing interest in constitution-making. . .

A light vote on constitutional amendments may also frequently be explained by the comparative unimportance of some, or, on the other hand, by the strong probability of their adoption on account of their general acceptance, or for some other reason.

But conceding that the electors do fail to take as much interest in abstract questions in the form of proposed constitutions and laws as in the election of candidates, does it follow that the system of direct popular action is a failure or that the state's interests would be promoted by discarding it?

"The lack of an absolutely full vote on any question," says Mr. Moffett, . . . "is not a disadvantage but the reverse. It means that only those who feel some interest in the subject, and are therefore prepared to act with a certain intelligence, take the trouble to vote, and that the members of the unintelligent residuum voluntarily disfranchise themselves."

It may be, and apparently is, true that more electors will go to the polls to vote for certain individuals for office than will exercise the higher privilege of determining the character of the state's laws. In other words, a personal and concrete subject arouses greater interest than an impersonal and abstract one. But it surely will not be claimed that those who vote simply for candidates and fail to vote on proposed laws are actuated by patriotic

or even intelligent motives. We have seen that the framers of the first popularly-adopted American state constitution sought to make ours "a government of laws, not of men"; the voter who goes to the polls because, and merely because, he wishes one or more individuals elected to office and who ignores the opportunity to express his choice concerning the laws, must be deemed to be more interested in the fortunes of individuals than in the welfare of the state and to have failed to attain a high standard of good citizenship.

M. Simon Deploige, in his objections to the referendum, declares: —

"The elector who writes Aye or No on his ballot-paper performs an act, the apparent simplicity of which has attracted the democrats, but this act is, as a matter of fact, a very complex one. It requires that each voter should be able not only to understand why legislation is necessary, but also should be able to judge whether the law in question is adequate to meet the case. Nothing effectual has as yet been devised which would assist the elector in forming a personal opinion on such a subject."

But it may well be asked if this is not after all an indictment of popular government in general rather than merely of popular legislation, and whether as a matter of fact the people are not now, in the last analysis, required to determine these questions but to do so under a system which disguises and conceals the fact that they are involved? When the American electorate is called upon to choose a president or a congress, or when the British voter is asked to register his choice for members of parliament, the result usually determines the fate of important measures vitally affecting the national policy. But these are not the questions most discussed in the campaign before the people. Instead of simplifying the voter's task the present system too often complicates it by involving the merits of a question with others, like the personality of candidates, or the necessity of party success. . .

Mr. A. Lawrence Lowell, in an elaborate article, says: —

"Our whole political system rests on the distinction between constitutional and other laws. The former are the solemn principles laid down by the people in its ultimate sovereignty; the latter are regulations made by its representatives within the limits of their authority, and the courts can hold unauthorized and void any act which exceeds those limits. The courts can do this because they are maintaining against the legislature the fundamental principles which the people themselves have determined to support, and they can do it only so long as the people feel that the constitution is something more sacred and enduring than ordinary laws, something that derives its force from a higher authority. Now, if all laws received their sanction from a direct popular vote, this distinction would disappear. There would cease to be any reason for considering one law more sacred than another, and hence our courts would soon lose their power to pass upon the constitutionality of statutes."

But the referendum is not a system under which "all laws receive their sanction from a direct popular vote." Its adoption means not the abolition of the legislature but primarily the maintenance of a wholesome check thereon, and at most the providing of an alternative system. In Switzerland the bulk of legislation is still enacted by the representative body.

Moreover, there are those who would not consider it a serious calamity if our courts should lose some of "their power to pass upon the constitutionality of statutes." In this day when important and beneficial statutes are often annulled on purely technical grounds, — when inferior courts and even ministerial officers assume to pass upon the constitutionality of laws, — the adoption of a system which would necessarily check this tendency could hardly be regarded as an unmixed evil.

Finally it should not be overlooked that this objection is not peculiar to the referendum, but that it could be made and has been made in reference to popular constitution-making. Woodrow Wilson declares that in our recent fundamental codes "the distinctions between constitutional and ordinary law hitherto

recognized and valued, tend to be fatally obscured," and it is common to deplore the tendency of the framers of these instruments to encroach on the field of general legislation. But whether or not this tendency is as dangerous as is claimed, it seems unlikely to be prevented by keeping out the referendum.

Professor Dicey, speaking with reference to the British legislature, says: —

"The referendum diminishes the importance of parliamentary debate and thereby detracts from the influence of parliament. That this must be so admits of no denial; a veto, whether it be exercised by a king or by an electorate, lessens the power of the legislature."

Mr. Bryce expresses the same thought when he says that direct popular legislation "tends to lower the authority and sense of responsibility in the legislature."

But the loss of legislative influence is already an accomplished fact.

"The American people," declares Professor Commons, "are fairly content with their executive and judicial departments of government, but they feel that their law-making bodies have painfully failed. This conviction pertains to all grades of legislatures, municipal, state and federal. The newspapers speak what the people feel; and judging therefrom it is popular to denounce aldermen, legislators and congressmen. When congress is in session, the business interests are reported to be in agony until it adjourns. The cry that rises towards the end of a legislature's session is humiliating. . . This demoralization of legislative bodies, these tendencies to restrict legislation, must be viewed as a profoundly alarming feature of American politics." . .

Indeed, instead of impairing the prestige of legislatures the referendum seems to offer the one means of saving what little of it still remains. Probably the one fact which has contributed more than any other to lower the tone and standing of legislative bodies is the presence and influence of the lobby. If im-

portant measures were subject to a reference to the people before attaining the finality of legislation the power and influence of the lobby would be greatly reduced, if not destroyed. Such, at least, has been the experience of South Dakota as declared by its chief executive.

These, then, are the results of a somewhat extensive search for the opinions of those who are supposed to speak with authority in opposition to the referendum. The arguments advanced and the reasons given seem far from convicting. This is not saying that there are no sound objections to the referendum. But if that system is to be condemned by the masters of political science it would seem that they must do so upon other grounds than those commonly urged.

4. THE RECALL IN OREGON [1]

The recall is the latest expedient to secure popular control over the government. Like direct legislation, it is as yet in its experimental stage in America. As in direct legislation the provisions adopted by Oregon for the recall are typical of the more advanced political thought.

The final step in the establishment of popular government in Oregon was the adoption of the recall amendment to the Constitution, which was adopted in 1908 by a vote of 58,381 to 31,002. Under this amendment any public officer may be recalled by the filing of a petition signed by twenty-five per cent of the number of electors who voted in his district in the preceding election. The petition must set forth the reasons for the recall, and if the officer does not resign within five days after the petition is filed a special election must be ordered to be held within twenty days to determine whether the people will recall such officer. On the ballot at such election the reasons for demanding the recall of said officer may be set forth in not more than 200

[1] Bourne, Jr., J., "Popular Government in Oregon." *Outlook*, Oct. 8, 1910; Vol. 96, No. 6, p. 329.

words. His justification of his course in office may be set forth in a like number of words. He retains his office until the results of the special election have been officially declared. No petition can be circulated against any officer until he has held office six months, except that in the case of a member of the State Legislature it may be filed at any time after five days from the beginning of the first session after his election. At the special election the candidate receiving the highest number of votes is declared elected. The special election is held at public expense, but a second recall petition cannot be filed against an officer unless the petitioners first pay the entire expense of the first recall election.

5. THE RECALL IN ARIZONA [1]

Arizona in the constitution of 1910 has applied the recall to a wider range of officers than any other state. The recall applied to the judiciary has been especially the subject of criticism because it is feared such a provision will make the courts bend their decisions to conform to passing popular opinion.

1. *Recall of Public Officers*

Sec. 1. Every public officer in the State of Arizona, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer, may by petition, which shall be known as a Recall Petition, demand his recall.

[1] Constitution of Arizona, Art. VIII, 1910. By the enabling act passed in 1911 Arizona was required to modify this article so that the recall should not apply to judges.